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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS

FEBRUARY 18, 1988
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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS

THURSDAY, FEBRUARY 18, 1988

U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
Washington, DC

The committee met, pursuant to notice, at 2 p.m., in room 628, Dirksen Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Evans, Daschle, Melcher, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I am pleased to welcome you to this hearing on the proposed amendments to the Indian Self-Determination and Educational Assistance Act.

This afternoon the committee will hear testimony on proposals to establish on a demonstration basis, legislative authority for the consolidation of contracts into one block grant of those BIA programs which would otherwise be eligible for separate contracts under the Indian Self-Determination Act.

On February 3, 1988 I was pleased to join with Senator Evans in introducing an amendment to S. 1703 as reported which would delete section 209 of the bill and insert in lieu thereof section 301, the Tribal Self-Governance Research and Demonstration Project. This amendment is intended to provide legislative authority for the demonstration grants which were authorized in the 1988 Interior Appropriations Act by my friend and colleague Congressman Sidney Yates, chairman of the House Subcommittee on Interior Appropriations.

In response to an administration proposal and a number of tribes who had expressed an interest in consolidated funding of their BIA contracts, Congressman Yates inserted language which authorizes $1 million to be used by the BIA for a tribal self-government demonstration project. Following the adoption of the continuing resolution, those tribes who had expressed an interest in pursuing the Administration's offer, albeit on their own terms, approached Senator Evans and myself and requested that we offer an amendment on their behalf which would provide Congressional direction to this project.

In response to the great interest which has been expressed by Indian tribes across the country relative to this proposal and in

some cases, concern that has been expressed over possible ramifications, I agreed to schedule today's hearings so that the Select Committee on Indian Affairs could hear all relevant perspectives.

I was also pleased to agree to the request of our colleague Senator Melcher that the committee request witnesses to address the amendment which he recently introduced which would provide an alternative to the proposed section 301. Senator Melcher's amendment will be considered as part of today's hearing.

Before closing I would like to reemphasize my commitment to seeking passage of S. 1703. The Indian Self-Determination Act embodied in S. 1703 represents a tremendous achievement by this committee working in partnership with Indian tribes across the country. As soon as possible after we have evaluated the results of this hearing, I intend to seek Senate action on S. 1703.

Accordingly, I look forward to hearing the testimony of today's witnesses on these various proposals, and before proceeding with our first witness, the Honorable Ross Swimmer, the Assistant Secretary for Indian Affairs, I would like to recognize my very distinguished vice chairman Senator Evans.

STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator EVANS. Thank you very much, Mr. Chairman. If I could have my entire statement placed in the record I will only refer to some portions of it.

I am aware that section 209 has been the subject of some concern both within Indian country and elsewhere. I've discussed this provision at great lengths with tribal leaders from Washington State and from other tribes throughout the country. As I indicated in my additional views in the committee's report on S. 1703 there was room for improvement in section 209. I continue to believe, however, that consolidated funding is a sound policy and may represent the logical culmination of the self-determination policy which many of us strongly support.

I was pleased to be able to work with tribal leaders and members of the committee to develop improvements to this provision. The amendment I filed earlier this month builds upon the consolidated funding concept.

The amendment however is a very different program from the ones proposed by the Department of the Interior. The amendment has been developed with the active participation of tribes who have expressed an interest in pursuing consolidated funding, and I have agreed to offer it at their request. The chairman has indicated some of the elements of that proposal and 10 tribes have responded to the Department of the Interior's initial inquiry on consolidated funding, and they have been specified in the continuing resolution for fiscal year 1988 as eligible for self-determination planning grants.

Mr. Chairman I believe that tribes like other units of government are accountable to their citizens and are fully capable of managing their own affairs to the benefits of the Indian citizen. Under this amendment Indian tribes will not be bound to provide

the exact services that the BIA would have provided. The Secretary and tribes are to report to Congress periodically on the progress of this project and to determine the relevant costs and benefits if any of such consolidated funding.

Services and funding to tribes not participating in the demonstration project are held harmless from any project costs or programs, and I think that's important to point out. Furthermore nothing in the demonstration project or the written agreement commonplated by the amendment is intended in any way to abrogate or to reduce the trust responsibility of the United States to Indian tribes.

Mr. President, S. 1703 is a unique piece of legislation in that it was developed with the active participation of Indian tribes throughout the country. I look forward to learning from the tribes who participated in the development of this legislation and from Assistant Secretary Swimmer on their views regarding what I consider to be a potentially most important piece of legislation.

[Prepared statement of Senator Evans appears in appendix.]

The CHAIRMAN. Because of the august importance and significance of this measure the record will be kept open until close of business Friday, March 4. If any of you would have additional statements or comments to make, or if other leaders in the Indian country would like to submit their statements, this record will be kept open for a little over 2 weeks so that we will have as complete a record as possible.

It is now my pleasure to call upon the Assistant Secretary, for Indian Affairs the Honorable Mr. Swimmer. Mr. Secretary, welcome again sir.

STATEMENT OF HON. ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Thank you, Mr. Chairman.

I appreciate the opportunity of speaking today to this legislation, particularly to the amendment where most of my comments will be confined. I do have a prepared statement that contains some detail in it that I would like to have submitted for the record if I could, and then just speak off the record for a few minutes.

The CHAIRMAN. Without objection. So ordered. Your full statement will be made part of the record.

Mr. SWIMMER. Mr. Chairman, I think this is a historic occasion and the opportunity to do something that is perhaps as important to Indian country as was the Self-Determination and Educational Assistance Act of the 1970's. We have had the experience now of nearly 12 years—over 12 years—under that act. We have seen some tremendous benefits. Nearly one-third of our budget of $1 billion is now contracted by tribes and programs are being operated directly by tribal governments that formerly were operated by the Bureau of Indian Affairs.

It is my opinion, however, that until local decisionmaking takes control of the budgeting process, and local action is taken to determine how to solve particular and peculiar problems of a reservation, that we won't be able to go much further in the self-determination mode because we are simply now turning over to tribes pro-

grams that are developed at the Federal level and in turning them over to tribes we are asking them to manage those programs but not necessarily be innovative—or for that matter even improve the management of them. In my tenure for 10 years as an Indian chief, I found that a tremendous resource in the Federal dollars that was coming to Indian tribes and mine in particular was not being used in an effective manner. Sure, we received the money—but to spend that money we were constrained by all kinds of obstacles in the way in which the money could be used, the purposes for which it could be used, reporting requirements, and on and on and on until we were spending more time and money trying to account back to the Federal Government for how we had spend the money than we were actually accomplishing the objective of a particular program.

It brought me to the conclusion—the hearing that the Secretary and I attended before Mr. Yates last year—that if we're really going to see some changes in Indian country, that change must come from that direction. The problems in Indian country are on the reservation, they're not in Washington, DC. The solutions likewise must come from the reservations and from tribal governments and I think even more importantly from community people—the people of that reservation—and not from Washington going the other way. If we can ever involve the local communities and tribal governments in the developments of solutions to the problems that are out there, be they alcoholism, unemployment, education, or anything else, we will have made a major effort in curing and solving some of those problems that now exist on the reservation.

To do this I have suggested at the hearing—and I am very pleased to find the support of some of the tribes that were at that particular hearing before Mr. Yates—that we consider the concept of what I call direct funding or tribal self-government. Don't be misled—and I don't want to mislead anyone—that this is a very new, radical departure, or extension perhaps, of self-determination. At least the way I proposed it, and what I hoped—and believed the tribes reporting back to me believed—initially I thought that amending 638 to give the tribes more flexibility and an easier way of receiving funds would be helpful. But the occasion came that tribes seemed to be looking for a new way of doing business. It seemed apparent to me that perhaps we should go that step further and first assume that we do have real valid existing tribal governments in Indian country that are doing some very good things. They're very capable. In that way, self-determination from 1975 has fulfilled a purpose. It has helped those tribal governments develop systems—accounting, personnel and otherwise—that have brought them into the 20th century, that now give them the structure they need to deal with on the local level.

Second, we can assume I think from what we have seen in Indian country and many places that now tribal government is capable of doing planning and development work from the reservation's perspective, and we do not need the Bureau of Indian Affairs to be the overseer—the Federal instrument that is the unseen hand guiding everything that happens on those reservations—at least not in all cases. Obviously we have some problems out there that are going to require our continued monitoring for many years to come, I'm afraid. But if we never turn over responsibility to

tribes to do some of these things on their own and to begin to plan the development and the spending of money with some freedom and flexibility, then none of the tribes will be able to move into that next step.

Let me speak specifically to some of the concerns I have in the amendment, because I think the tribes may clarify in their mind, at least, what my thoughts are on this particular issue, and certainly they may want to adjust some of their testimony.

First of all, the amendment and the change to the subsection I think is excellent. It sets it out as a special situation, separates it from Public Law 93-638 processes, which it should be, and sets it up as a different way of doing business. However, as we go through the amendment, the following things catch my attention.

First, we say "eligible to take money for those elements that the tribes could contract for." I disagree that we should limit this experiment or demonstration only to projects that are subject to Public Law 93-638. I think we should turn over the moneys that we spend on behalf of tribes all the way to the central office. I think that tribal governments should take the Federal dollars that are now being spent on their behalf, either by them or by us, and be allowed to use those moneys or to budget those moneys from their perspective and to use our overhead dollars if necessary to spend on their overhead. That's essential at the reservation level.

In doing that, however, it is obvious that if a tribe is receiving all of the dollars that the Bureau of Indian Affairs is spending on their behalf, there would not be the money then to fund the agency office. So the tribes could not come to us under this plan and take 100 percent of the dollars and still expect us to run an agency. So the consequence is that we would consolidate agencies. We would eventually consolidate agencies, we would eventually consolidate area offices. That is very long-term and I'm not suggesting that this is going to happen in the near term, but I'm saying that as a consequence that this should be expected and accepted. In doing that, however, we know—and you know certainly—the pressures that would be brought to bear, political and otherwise, by the non-Indian community who would fear the loss of a Federal establishment. Even though those jobs are still going to be in the community, they're no longer under the guise of the Federal Government. We may not have the buildings we have now—we may be using tribal buildings.

Obviously the tribes don't have to take 100 percent of the dollars either. If they chose for us to continue our work with the superintendent, with the infrastructure that we have at the agency office, we would continue doing that. It should be totally flexible. I'm suggesting particularly in multi- tribe agencies that this is one of the consequences in order for us to continue providing full services to the other tribes in that area or agency that might not be involved in this particular demonstration project.

Second, we provide in there a retrocession activity. I don't believe that retrocession in the way that it's stated is appropriate, or the way that Public Law 93-638 talks about it is appropriate. We are suggesting to tribes that they take a new look at their reservations, that they determine where they want to go, what their goal is going to be, and where they're going to focus their energies—it

very well may be that they would spend the money that we're now spending in a radically different way than the way we're spending it. If the tribe then 2 years from now decided that they didn't like that plan anymore and they were to retrocede back to us, we may not even run those programs that they're operating. So we would have to modify that language in some way.

If they did retrocede the money back to us, we would have to go back to the so-called tried and true programs the Bureau operates, because that's all we would have the capacity to do. I might add that it's further complicated if they're taking overhead money from the Bureau of Indian Affairs and then to retrocede where we may have consolidated an agency office. I think that while we need to consider alternatives that this straight retrocession—saying I don't want to participate any more with the tribal government, you do it for me—we need to consider more about how we could work something that would address some of these concerns that I have.

I'm a little concerned because I wasn't trying to sell this proposal to anyone—it was something that I suggested at Congressman Yates' hearing and the tribes seemed to be interested in. I am concerned however in recent days where we have heard from at least 2 dozen more tribes that have indicated a very real interest. As late as yesterday I saw a press clipping from Navajo country where the chairman was instructed by his tribal council to come to Washington and meet with me personally to talk about a new relationship with the Bureau of Indian Affairs. I think those kinds of things signal that other tribes are also interested in pursuing the demonstration project. I'm a little reluctant to limit this opportunity of demonstration just to the 10 tribes that enumerated and would suggest that if we want to put a limit on it, maybe add up to 10 more, or 5 more, or change the mix some, but at least give some tribes the opportunity that are far down the road in management and could easily take over Bureau functions that should have been transferred years ago. Tribes that weren't able to attend the meeting last year but which have heard about it and are interested in it. We should permit some of the other tribes to come into a demonstration.

I am concerned about the mandatory type language, whereby in the amendment these 10 tribes—once they had come to us with their proposals—we would be required to enter into a particular contract with them. I believe the flexibility in this amendment needs to be maintained on both sides. I think it must be entirely voluntary. This in no way is taking away from them the right under Public Law 93-638 to contract. It's not a defamation issue. I think that we should retain the right to say no to a tribe that's coming in to us if we believe they're simply not capable of moving in this direction as fast as what they might want to do.

I recognize that this sounds like we're trying to put some constraints on it, but we have looked at the 10 tribes for instance, and we feel that most of them without question are capable of getting involved in this kind of project, and we see some others out there that might be too. We do believe that putting mandatory language in, saying you shall do this, with these tribes or any others, at this stage—being a demonstration project—is a little bit onerous.

We have a similar feeling about the binding arbitration issue. We believe that we will have to identify all of the costs that are being allocated to a particular tribe as we go through the process. Obviously when we have an agency or area office that serves more than one tribe, there has to be a negotiation process, not only with the tribe that's applying for the project, but with the other tribes that that area or agency might be serving—and certainly in the case of the central office. We're perfectly willing and acknowledge that we would have to share the methodology and that we would have to do some negotiation with the tribes. But if those negotiations break down and we're unable to reach an agreement, no one is prejudiced by walking away from the table. The tribe may still continue under 638 to contract whatever it's been contracting for under those rules and regulations.

This demonstration project requires a commitment on both sides that says we will sit down fairly, negotiate a process through, come up with the amount of money that we can agree to as being provided to that tribe either by us or by them, and if we can't reach an agreement that we'd be willing to walk from the table.

We appreciate the fact that there is a paragraph that gives us a blanket waiver of Federal laws. We have talked to staff about this and I don't think that we want to go quite that far. We would like to maintain the criminal laws—we don't want to waive those. If a tribe develops its budget and approves it through the tribal council and we find at the end of the year through an independent audit that they've misspent, there should be sanctions available to us just like any other misuse of Federal funds, against that tribal government or individuals as the case may be.

There are some other general type laws—what we have done is meet with the Justice Department. We will develop a list of those and meet with your staff and with the tribes that are involved here, go through those, and see which ones we would suggest being waived or not waived. Perhaps do it by exception—waive them all except for these. The main thing is that we want to get away from the procurement type thing, and all the burdensome regulations and laws that we're presently confined with in Public Law 93-638.

We also are concerned about the accountability of the tribes. If we're going to give tribes 10 percent or 100 percent of the money and give them the authority to spend it in the way that they deem best, we believe that some risk must attach to that. We believe that risk must extend not only to the liability of the Federal Government but to the liability of the people on that reservation. We think that there is a need for the committee to authorize a waiver of sovereign immunity at the tribes 'request. This is simply putting it back at the tribal level that in certain cases there needs to be the ability of the tribe—where that's not present now—to waive its sovereign immunity.

We're not suggesting that a blanket waiver be given by the committee automatically permitting tribes to be sued. We're saying that should be left up to the tribes, but on a case-to-case basis there are going to be activities a tribe enters into where people that they are serving or not serving are going to need to have access to the courts. This issue came up indirectly in a civil rights hearing I recently attended and testified before. We have one tribal govern-

ment that stated that they could not be sued by anyone on their reservation for a violation of the Indian Civil Rights Act. I disagree with that conclusion.

I think that where there are issues involving managing—if the tribes choose to do this—the trust of funds or the trust lands of individual Indians on the reservation—then there needs to be some recourse. While the Federal Government still remains responsible, we are not entering the question of trust responsibility here in my opinion. We still retain that responsibility in any eventuality. If we turn over the management of services to tribes on behalf of individuals and they fail to manage for some reason, there must be access through the courts—tribal or otherwise—by individuals for whom they have failed to have redress not only against us but against the tribe too. I'm concerned about the provision for 2-year planning grants. I think it's unnecessary. We have had recent discussions concerning the $1 million that was put into the budget by the Appropriations Committee. I felt that was unnecessary. I feel that in fact in recent days a lot of effort has gone into trying to explain the $1 million rather than talk about the concept, and that's unnecessary.

The message that I'm trying to give the tribes is that we have a certain amount of money in our budget, which is around $1 billion. It hasn't gone up, it isn't likely in my opinion to go down very much. That amount of money is what's on the table. If we could give that to Indian tribes and let them plan, I think we could have more and better things happen out there. The idea of simply providing more money in the planning grants when we're giving tribes $10, $15, $250 million now takes away from the idea that there is responsibility for using the money they have now to develop this proposal and that they must live within the particular budget that's out there. This proposal shifts responsibility to problem solving to the reservations. My suggestions would increase the risk on the reservations and tribal government. I think risk would also increase the accountability out there. It could have the effect of reducing the Bureau of Indian Affairs' overhead tremendously. Obviously a lot of that overhead would be picked up by the tribes in an administrative program.

Those are my recommendations and suggestions and I again appreciate this committee's concern and willingness to examine this because it is far-reaching and a major, major change in the way that we would do business with Indian tribes in the future.

[Prepared statement of Mr. Swimmer appears in appendix.]

The CHAIRMAN. Before I call upon my distinguished colleague from Montana for his opening remarks, I would like to make an observation. It is a personal one, and very likely may be one that is shared by my colleagues.

The central issue before us is this unique and special relationship of trust. A trust relationship which exists between the sovereign Government of the United States and the several sovereign entities, the Indian nations and tribes. Throughout my term as chairman, leaders of these various tribes and nations have expressed their concerns that this trust relationship was being weakened, diminished, or destroyed. I would like to assure one and all that it is not the intention of this committee to in any way destroy,

diminish, demolish, minimize, or in any way erode this special trust relationship.

Accordingly, when this amendment was being drafted, we noted that there were 10 tribes who were interested. So, we limited the scope of this application to just these 10 tribes, and furthermore, we limited the application of the activities involved, instead of the full spectrum as the Secretary had proposed. We did not wish to in any way send a message or suggest to the Indian country that we are now in a process of diminishing this trust relationship. Since the amendment was drafted, Senator Melcher has noted that there are several other tribes who wish to participate in this demonstration project. These two words are very important: demonstration project. So, accordingly he drafted his amendment. I think his amendment makes good sense and I am certain that we will be able to accommodate him.

This is just to assure all of you here that this hearing is not the first step toward the destruction of this unique trust relationship that exists between the sovereign Government of the United States and the sovereign Indian countries.

Senator Melcher.

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

Senator MELCHER. Mr. Chairman, I'm sorry I'm late. I had to go to the other regular hearing and discovered I was lost whereas this hearing was concerned.

I very much appreciate your having this hearing and hearing Ross Swimmer's testimony. I also appreciate the fact that the tribes have shown their interest by attending today. These are representatives of individual tribes and associations.

I have a prepared statement that I'd like to submit to the record along with an amendment that I introduced yesterday—it is not part of the record.

On the amendment, recognizing that first of all Indian education groups are concerned about what this might mean to them, I drafted this amendment. Also, many tribes other than the 10 tribes named, would be interested in some procedure where they might apply even if it's only competitively, for the demonstration project. The amendment was drafted to take in these concerns.

The amendment would exempt from the demonstration project educational programs whether they're community colleges, primary and secondary schools or Johnson-O'Malley funds.

Second, the other tribes that were interested could apply and through a competitive process the BIA could select those tribes that could share in the grant money available for the demonstration project. But at least 1 out of each of the 12 areas of the BIA would have to be part of it. Whether there are 12 tribes or 20 tribes or 25 tribes or whatever, I think that the input that we'd get back from these tribes would be very helpful. I don't believe we should be just plunging ahead without some idea of what it might accomplish for the benefit of the tribes. I recognize and appreciate what you remarked concerning trust responsibility and the legal points that are involved.

Mr. Chairman, I do not wish to take any more time except to ask unanimous consent that the letters from the American Indian Higher Education Consortium; the Association of Contract Tribal Schools; the Indian Education Association of Montana; and the Montana-Wyoming Tribal Chairman's Association be made part of the record.

The CHAIRMAN. Without objection, the copy of the amendment and supporting statements of various Indian organizations will be made part of the record.

[Information to be supplied appears in appendix.]

The CHAIRMAN. Secretary Swimmer, do you agree that this exercise will not in any way diminish, destroy or minimize the trust relationship that presently exists between our Government and the governments of the several Indian countries and States?

Mr. SWIMMER. I would agree with that assessment. The issue might be more as to what is trust responsibility and where does it apply. In my opinion, the responsibility is to protect and preserve the assets of the various tribes from abuse, misuse, and loss. It is not necessarily incorporated into the management of those assets, however, an easy thing to look at is the $1 billion trust fund. For an organization or organizations to have $1 billion at their disposal and not use it is in my opinion a shortcoming. On the other hand, we have that money held in trust for the tribe. We by law cannot allow it to be diminished at all, and as long as we manage it we must manage it to the highest degree which means no risk and the least amount of income is going to come in on it. So that $1 billion is out here scattered around the country not doing tribes a lot of good except that they spend the interest from it.

On the other hand if a tribe chose to manage that account, as several tribes do their money now, they could probably double or triple the income, also with minimum risk, but that risk would be an assured risk in management. We would not be able to permit under current law the tribes to lose the money, so to speak. I think that jointly sharing the management or having the management of that fund by tribes could go a long way to assist them. I think that it's possible that tribes could take over the full responsibility for it. But that doesn't necessarily diminish our role as the protector of that particular fund of money unless the tribes chose to take it 100 percent out of trust and then they could do with it as they chose without our involvement.

That would be an affirmative decision of the tribe. Timber management, land management would be the same way: local management could be done by the tribes, and in fact we know we have many many obstacles to the management of tribal land. These obstacles are incorporated in the regulations, policy, procedures, manuals that are a century old. We're still trying to run a 50 million acre land program with rules that have been developed over a century—it doesn't make any sense. And yet if we could turn that management over to tribes and have a shared responsibility it doesn't diminish the trust—that land still stays in trust, it's still exempt from all local property taxes, it still have a special character—that in no way diminishes the trust estate. But by being managed locally through a tribe without having to be burdened with all

the rules and regulations we manage under, very possible you could triple or increase the income tenfold.

The CHAIRMAN. Noting the history of our Government's relationship with Indian nations, with periods of duplicity and broken promises, I think it is understandable for some of our tribal leaders to have some suspicion as to this trust. I think it will take much more than words expressed by our government representative or our Congressional representatives to provide such assurances. I think time will tell, but I can assure you that it is not the intention of this committee to in any way set aside or diminish this trust relationship.

Senator Evans.

Senator EVANS. Thank you, Mr. Chairman. I was struck by your last statement, Mr. Secretary, and considering you have 50 million acres of land working with regulations on timber management and other tomes that are a century old, or some of them up to that old, why? How many people do we have working for the Bureau of Indian Affairs, nationally?

Mr. SWIMMER. Approximately 13,000.

Senator EVANS. 13,000? And somehow, in some way we haven't been able to develop more modern regulations or ways of handling things? Why not? What are 13,000 people doing for a century?

Mr. SWIMMER. Trying to administer the regulations.

Senator EVANS. I suppose—I guess I knew that. It's a more fundamental question than that. Are we so burdened down with just nitpicking regulations that we've forgotten what the mission is?

Mr. SWIMMER. Yes; we don't know what the mission is, and yes, we have regulations and frankly the problem is at all three levels of Government. We often will propose regulations and we'll have Congress introduce legislation forbidding us from enacting them. We'll go forward with regulations and we'll have one tribe say no and one tribe say yes. We'll have internal experts telling us that no, those regulations aren't good, better do something else. We'll have OMB suggesting to us that those regulations might cost money.

The regulatory process—I have found in the 2 years I have been in this Government—is abominable. To develop regulations and to have to have regulations after the laws are passed—I believe that right now just in the land management situation through the formation of an Indian agriculture task force, we have received some proposed regulation changes that would make leasing of land—the bonding requirements, the appraisal requirements and all that—a lot easier.

We have 250,000 individual Indian land owners because we do not have an effective mechanism for partitioning land. As people die, their land interests—it might be one-thousandth of an interest in a piece of land—goes to another 300 people, and this goes on and on. If we were to suggest a partition law, we would immediately be accused of termination, or of trying to deny that person who lived someplace in California who owns a one one-thousandth interest in an acre of land at Rosebud of taking his land away from him because we're going to require forced partition. As long as we have those kinds of rules, and as long as we have to abide by them, we will protect that one-thousandth interest, even though it costs us

thousands of dollars every year to do it, and the income to that individual may be $5, $1, $0.30. But we will spend hundreds of thousands of dollars administering those 250,000 fractionated interests out there.

That's the kind of relief we need to have, and we need to modernize our regulations. Yes, it is an extremely difficult process to go through the administration to change regulation, 6 years. There's no unwillingness on my part—or I think on the part of most of the people who deal with land—I have been to agency after agency, Senator, who have told me that the appraisal requirements, the bonding requirements, the requirement of not being able to lease in a certain way—we have 400,000 acres out of lease now because of arbitrary requirements, but we follow the law.

Senator EVANS. I expect the primary responsibility is in the way we draft the laws and pile them up one on top of the other. Perhaps in a small way this is an attempt to slash through some of that underbrush and give tribes an opportunity to deal with what they know best and what they think they can do best.

In your statement you talk about the trust responsibility. I'm a little curious as to one statement in here, where it says subject to this caveat it is important for all to understand that we recognize the intrinsic nature of this fiduciary relationship to Indian tribes as it was discussed by Chief Justice Marshall. Isn't the trust responsibility more than just a fiduciary responsibility?

Mr. SWIMMER. That's generally the way it's been interpreted—that is, that we act as a fiduciary on behalf of Indian tribes' property interests. I specifically put that provision in there because of the discussion recently over trust responsibility. There are some that would suggest that Indian tribes are not really sovereign nations but rather extensions of the Federal Government, and that we act as a trustee for their benefit in holding title to property, money, and other things.

There are others who tend to follow the more thought-out version—Justice Marshall's assertion that tribes are more of a dependent domestic nation. They are in fact separate from the Federal Government, but they are hooked to the Federal Government because of their needs and requirements as the relationship of a fiduciary. We have agreed to manage or to hold on their behalf certain resources, certain assets, to protect them against waste and loss and everything like that. In that sense we act as a trustee for those resources. We have to link that to the standards of a fiduciary. In fact, these domestic dependent sovereign nations are separate governments. They actually are sovereign to themselves to a certain extent subject to the Constitution of the United States, and they also share in a responsibility for what happens on that reservation. While we're holding those resources in trust for them and acting as fiduciaries, they must administer their tribal government as a government would. They are in turn fiduciaries for some of their Indian people—for some of their membership itself.

Senator EVANS. With that, and with the statement that follows, on the end of that paragraph, "We believe that provision of services to Indian citizens on reservations and improving the quality of life on Indian reservations is a shared responsibility between the

United States and individual tribes." Then we go on to some of these questions on decisionmaking.

On page 7 you say that because of the voluntary and demonstration nature of the project it is premature and inappropriate to direct the secretary to negotiate and enter into contracts. Then you go on through that whole paragraph. It sounds to me that you're saying that the final decision about whether or not to go ahead with one of these projects is and should remain with the Bureau of Indian Affairs?

Mr. SWIMMER. Only in that we do not have—and I don't propose we'd rather not develop—a specific set of standards—regulations if you will—trying to set forth the requirements. We have tried to keep it as simple as possible, but we believe if you have situations where in our collective judgment a tribe is not capable—has not demonstrated a capability of having a self-funded budget with minimal oversight—that we should not be forced into that. We would be willing to work with a committee over the next year and perhaps develop those guidelines, but if we do that now my thought is that it should be voluntary on both sides. No tribe should feel they're being forced into doing something, nor should we be forced into doing something on their behalf.

It might even be that if we have a tribe that is very capable but we're unable to reach some sort of accommodation for the other tribes in a multi-tribe agency that would be affected, we would then deem it not in the best interest to go forward with the demonstration project at this time. I think that we will have sufficient tribes to do demonstration projects in spite of that. As I said, no one is prejudiced by that. This is a voluntary effort and no one has to do it. No one should be forced to do it on either side.

Senator EVANS. Who should make the determination—on page 8, you're talking in line with providing the tribal governments with increased risk and responsibility appropriate for governments. You talk about authorization for tribes to waive their sovereign immunity to suit from tribal members. Who should make the determination as to what elements, sections or all of the demonstration projects should require waiver of sovereign immunity?

Mr. SWIMMER. I think the tribes would have to do that. I would leave that strictly up to the tribe. I would not—if the tribe is going to enter into a particular activity that may be totally different than we're doing, but it might affect property interest or lives on the reservation, then they should make some provision for redress by those people being affected. They should allow them to go into court to challenge the tribe's determination or whatever it might be.

For instance, the tribe could elect not to fund a general assistance program but instead to provide assistance to a category of people on the reservation meeting certain criteria. We have not guidelines, no regulations on that. There would be no recourse by the people to us. The only recourse would be to the tribe. If you went to the tribal government and they said you can't sue us, we're sovereign, then I don't think the tribe would be successful. I would expect that the tribe would make that decision. If they chose not to make it, then I think they're going to have problems down the line. The waiver of immunity—

Senator EVANS. My specific question was at the front end, when those determination presumably would be made, if the tribes for whatever reason chose not to take a waiver of sovereign immunity, that would not affect your decision of whether or not to go ahead with the project?

Mr. SWIMMER. No; that must remain a tribal decision. I'm just saying, give them the authority to make that decision.

Senator EVANS. I only had a chance today to read the amendment of Senator Melcher's which I think has several good things in it. I'm concerned about a couple of things however. The requirement that the demonstration be one in at least each of twelve areas—what if the tribes who step forward who want to do this are not so evenly divided and the degree to which we have more and more tribes are involved with simply no more money. Are we diluting beyond rationality this demonstration program?

Mr. SWIMMER. Two issues there. I agree that having one in each area tends to appear to be mandatory. Again, I'm not sure that we would have one in each area. It's possible, but I just haven't reviewed those that would be interested. Maybe we could do it if we had one in at least six areas. But to require 1 in all 12 makes it difficult because I don't want to go out and force anyone to do it.

Second, as far as the $1 million of the planning money, I find that irrelevant to the issue at hand. I think the Appropriations Committee probably considered that to be maybe some assistance to tribes and it would be an encouragement to them to get involved in the process. I don't think it's really essential to tribes to have extra planning money to get into this process.

It would certainly—

Senator EVANS. If it's a new process and has to be thought through, where would they get the resources to do that?

Mr. SWIMMER. We would be very willing to allow them to reprogram moneys that they have now from the Bureau of Indian affairs—

Senator EVANS. Most tribes say that they don't get enough program money now to cover all their needs. How can they reprogram from what now is considered to be a shortage?

Mr. SWIMMER. I think that—substituting my judgment here—there is money that they would choose to spend if they wanted to get into this project, because giving the flexibility of spending that money in a different way could very well mean that they would have the money to solve some of the problems that they haven't solved so far. That's something that they would have to look at. In my opinion it's not the issues as far as the legal and the consulting and all that's necessary. It's a matter of the tribes. If they wanted to participate in this, they must get with their program people, with their people on the reservation and do an internal analysis of what it is they want to do if they had the flexibility and the freedom to do it. I don't see that it's taking a lot of outside money. They already have staff. They have large staffs of people who are managing Public Law 93-638 programs already that are constantly doing this kind of planning. I think that the resources are there for them to pull together and sit down with us to plan differently.

As far as the $1 million is concerned, sure, if we open it up and make it competitive to all of the tribes and everybody gets $3,000

or $4,000 it's not going to mean a whole lot. On the other hand, my thought is that we'll probably spend $1 million fairly quickly and get it out of the way so we can get on with the project.

The CHAIRMAN. Thank you. Senator Melcher.

Senator MELCHER. I was a little bit concerned with the alluding to forest plans and questions that everyone's asked about how many employees are involved in forest plans. 13,000? Did I understand correctly?

Mr. SWIMMER. We have 13,000 employees at the Bureau of Indian Affairs.

Senator EVANS. At the Bureau of Indian Affairs.

Senator MELCHER. Oh. How many employees—would you know—are involved with Indian forests?

Mr. SWIMMER. In the forestry program?

Senator MELCHER. At the BIA.

Mr. SWIMMER. I couldn't give you an exact number.

Senator MELCHER. Is not—I'm sorry to have to ask this — the BIA forestry program patterned after the forestry program of National Parks?

Mr. SWIMMER. No.

Senator MELCHER. It is not? Sustained yield?

Mr. SWIMMER. Well, I'm sure some of the management principles that are used there are used—

Senator MELCHER. That's what I meant. The management principles—

Mr. SWIMMER. Yes; but I don't think there is a lot of consultation between the two. It could be managed very differently. It's managed differently from reservation to reservation.

Senator MELCHER. I think though the point you made demonstrates a diversity of the problems of 275 different tribes. 275? 280? More than that, right? And the first question I have goes to the point of what about education formula grants? How should they be handled in one of these demonstration projects according to your best judgment?

Mr. SWIMMER. I think the tribe should be allowed to have the money that's now being spent for education and use it as part of this project. I don't think it should be exempted. I think that one of the results of that could be a better managed education program on that reservation because I think more innovation would occur. More work with public schools would occur. There would be more incentive to spend the money to get results out there rather than the way it's done now.

Senator MELCHER. That would include the higher education funds?

Mr. SWIMMER. I would not exempt any of the money.

Senator MELCHER. None of it? And what would then be the responsibility for what those funds were used for? Just what if the tribes chose to use Johnson-O'Malley funds for something else other than education?

Mr. SWIMMER. That would be their privilege. They would have that right to say that we don't believe the Johnson-O'Malley program is effective for the purposes to which the money is being used. We believe that doing something else in the public schools or in our own schools could be much more effective than using the

money the way it's been used in the past. They may want to put the Johnson-O'Malley into higher education.

Senator MELCHER. Well, I don't quite follow that. I'd like you to bear with me, if you would, Mr. Secretary. They could choose, you say, to put it in public schools. What if they chose not to put it into public schools, or schools of their choice? That's the basic question—and I'm afraid the basic concern of these educational groups connected with the tribes. I cannot envision a tribe doing that, but what if they did?

Mr. SWIMMER. Well, I can't—

Senator MELCHER. Wouldn't that very much get to the trust responsibility immediately?

Mr. SWIMMER. I can't envision the tribe doing that either. However, I do look at that as a tribal—I'm plugging here 1 minute—a tribal option that they would by taking that money accept the responsibility for the education. They would have to decide how best to provide that education on the reservation. If they chose to move the money into some other category they're going to be held accountable by the people on that reservation. They're going to be held accountable for how it gets spent. If they don't put it into the school district there's certainly going to be a price to pay at the ballot box. But that's where it should be.

The problem that we have across the board here is that there are some tribes who have a greater education need than the Johnson-O'Malley need is. There are some that need to have more money in higher education because they don't have a high dropout rate at the local secondary school level. There are others that don't have anybody in higher ed but they need to spend the money in secondary schools trying to get their people through the school and get them educated.

The way it is now, that local decisionmaking is done, it is formulated by us. We say "Here's the money, you spend it this way whether you need to or not."

Senator MELCHER. There are two points that I want to pursue on that. First, is that you're talking—as I would talk—that I can't conceive the tribe using education money for purposes other than education. Second, you are then going on just as if it would stay in education: some tribes having a greater need for higher education or elementary education, and therefore they make that judgment. But that leaves aside the point of whether or not it would go into education at all. And that's the point I'm asking about. As I understand the proposal as it is originally made, it would allow a tribe to have education funds diverted to other means that are not education at all. Would that get right at the trust responsibility?

Mr. SWIMMER. Well, it would. I think to answer your question, the process that I would suggest is that the tribe would then submit its budget to us as the agency, and we would submit it to Congress. If Congress saw that the money was not being spent on education, and those people were not going to be educated as a result of that, you wouldn't approve the budget and we couldn't approve it either.

Senator MELCHER. My second point is, while you made reference to $1 billion held in trust for tribes, what we're really dealing with is funds appropriated by Congress annually, are we not?

Mr. SWIMMER. No; there are two funds. One is $1 billion which is the BIA's budget. The other is about $1.8 billion now that is tribal trust moneys from judgment funds, receipts from irrigation districts,—

Senator MELCHER. So we're really dealing with the appropriated funds?

Mr. SWIMMER. Yes; that's what I—

Senator MELCHER. Your discussion is directed at appropriated funds?

Mr. SWIMMER. That's right. The other was a hypothetical view of the trusteeship.

Senator MELCHER. On general assistance—one quick question. Would an individual denied general assistance if the tribe chose, be eligible for assistance otherwise from the Federal Government?

Mr. SWIMMER. Most of the people we provide general assistance to don't have eligibility through any other system. They could be, but they're not eligible because the State doesn't provide it for whatever reason.

Senator MELCHER. Without general assistance would they not have a good case to be eligible, no matter what the State thought?

Mr. SWIMMER. Well, they would, but for instance, we provide single people unemployed head-of-household money; the State won't do that—usually it's tied to FDC requirements to have children.

Senator MELCHER. Regarding the planning money being provided—to 275, 285 tribes—my thought is that perhaps the tribes that would most benefit if this is good would be the poorer tribes, trying to stretch the dollar as far as it would go, based on local conditions as they perceived them and identifying the greatest need. Would you comment on that?

Mr. SWIMMER. Most of the tribes receive a pretty equal amount of funding. I'm not sure that there could be categorized poorer tribes versus rich tribes of those that perhaps have more natural resource income—oil and gas, forest, whatever. As far as Federal funds are concerned, they're pretty well distributed across the board, even though it's just programmatic type distribution. On a per-capita basis, a couple thousand or $1,500 a head is the way the money is distributed. So if you're talking about a tribe—a smaller tribe—they would receive less money from us, and they might have less money to plan with, but relative to the larger tribes with more money, they don't need the planning. For them to plan for a $1 million budget would be comparable to a larger tribe planning for a $100 million budget. I don't see the planning money as necessarily equalizing or helping to equalize that, unless you mean—

Senator MELCHER. No; I didn't mean the planning money. I mean the opportunity to try this program. I'm not talking about poor as to fewer numbers, I'm talking about poor tribes per capita, regardless of size.

Mr. SWIMMER. Well, again the opportunity—the planning opportunity here is—if I understand your question the opportunity to do this demonstration project would be available to all of the tribes, or should be eventually available to all of the tribes, the smaller or the poorer tribes generally have fewer tribal government services anyway because they're not as broad-ranging as some other tribe

would be. I'm not sure there would be a problem with the moneys that would be available. Relatively speaking the available money is the same. But one tribe may be so small that it doesn't operate a law enforcement program whereas another tribe does. The money we're spending on the first tribe would be much less than we're spending on a larger tribe. But on a per-capita basis it comes out about the same.

Senator MELCHER. One last question. I'll return to education—let's say elementary and secondary education. The funds that are made available under law are per capita, so it would seem to me that if those funds were not spent for students but somehow used for other purposes it would violate the law.

Mr. SWIMMER. That's true of nearly all of the moneys that would be involved in this demonstration project. That's why we would need the authorizing language or exception language that would permit the tribes to reorder their priorities if you will or spend in a different way.

Senator MELCHER. Well, I think a word of caution then is necessary that appropriated funds for programs such as Indian education—if they're not spent that way, even down to following the formula, the likelihood of Congress continuing to fund the same amount of dollars per student would be probably diluted or at least threatened. Congress is after all made up of individual votes and the vote can waive a program because they believe it's right.

Mr. SWIMMER. Unfortunately that would be the same argument we would face from any interest group opposed. Your law enforcement would say the same thing—if you're taking money that's been appropriated to do a law enforcement program at Navajo and they choose to use it for an employment assistance program instead, how are they going to do law enforcement? Well, those are the governmental type decisions that they have to decide. They're going to put this money together with their money and develop a budget for how they're going to run that reservation. Education, law enforcement— everything they do out there. For me, that would be interesting to see in the demonstration project whether they put together a budget that addressed those needs.

Senator MELCHER. Thank you very much, Mr. Secretary.

The CHAIRMAN. Senator. Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Secretary, I note a feeling of frustration and my observation over the years of the activities of the BIA I guess support the contention of the levels of bureaucracy imposed by this legislative body as much as our responsibility which we share with the House; the inconsistencies and inefficiencies are associated with the good intentions of obviously bettering the livelihood of America's Indian community.

However, it's fair to note that America's Indian community has been with us for an extended period of time. They have had the opportunity to participate—well, I think it's mutual—they were here first, but the realities associated with the process is one that

because of the responsibility of accountability has been maintained by the agency with the oversight of the various committees in Congress, which is contradictory to the concept of self- determination. We give it and take it away, or we make the rules and regulations so darned complex that it's very difficult for them to be observed and it appears to me in the process we've set up the BIA as the agency accountable for the funding for the various programs that are provided for the taxpayers' dollar.

I assume that if you had your druthers you could sit down and propose substantial efficiencies. Could you make those recommendations and still within the framework of the existing authorizations, or would it require almost a total revamp of the authority of the oversight responsibility of the agency? It seems to me that this committee has an obligation to do more—I think the Senator from Washington touched on it—than just reflect on the issue of an amendment to the Indian Self-Determination Act. Indeed, if we're going to sit here and do anything responsible, maybe there's a need for an entire revamping of the process. We're talking about a block grant concept that was a concept that I think was brought to bear by the Reagan Administration which replaced the categorical grants with the block grant. The idea that people would be more responsive to taking the initiative, to doing the job at a local level because they would be closer to interact. But I don't know how to compromise that with the responsibility that you have as the oversight for carrying out the efficiencies. In carrying out the efficiencies you run into the inefficiencies as a consequence of the bureaucracy. We seem to have made a full circle here.

I have one of my constituents with us who is going to be testifying today, Mr. Ed Thomas, Executive Director of the Tlingit-Haida Council. He favors this as I do, but I can reflect projects that come to my mind in my State—Fish Hatchery at Matlakatla where the BIA contracted for the project but the project isn't finished and it's inconceivable to me and I can't get a reasonable explanation why. Because the process that I'm used to working under is that there's an architectural design that's compatible to complete the project, to do the job, and then there's a contract left and a bond required by the contractor and the BIA should have the oversight responsibility of seeing that these things are done and if they're not done then the bonding companies is held liable or something. I'm left with the reality that my constituents come to me and say that it's not finished and they don't know whether the contractors is responsible or irresponsible or whether there's a bonding company. It's like going in and pulling spaghetti out to try and say well, how can we recover it? You just write a check for more money. I'm as frustrated as a parrot in a UR. Can you enlighten me in thirty seconds or more of where you think we ought to start?

I don't know how you can take a position as head of the BIA. It would drive me crazy. Simply because of the inability to try and wade through the process and live within the requirements that you have. I commend you for your fortitude and diligence.

Mr. SWIMMER. I appreciate that, but I think that the answer does lie in more of an effective block grant. We don't have block grant. We weren't given that ability in the beginning, as some of the State governments were. I think we have seen that block grants

can work better. I am proposing something that goes even beyond that to some extent, anyway, and gets more of the agency's money to the tribes.

The example you cited is excellent to just show what kinds of frustrations we run into. You see, the Bureau of Indian Affairs does not control its facilities. We do not control our construction program. That is within another Assistant Secretary of the Department of the Interior, because the Appropriations Committee said we weren't capable. So we do not—we have no management control over what gets built, how it gets built, or where it gets built. All we can do is appeal to our sister agency in Interior like everyone else does.

When we have those kinds of breakdowns it's very difficult for us to manage and to address the fish hatchery or a school situation or a repair and maintenance or anything else.

Senator MURKOWSKI. Why don't we change it? You're in an impossible situation out there. My people come to me, I call you and you say hey! You don't have any control, it's another agency.

Senator EVANS. So we go around in circles. It's not another agency, it's another department within—

Mr. SWIMMER. Within the same department. The frustrations are there and they're very real. I certainly have experienced my share of them. I think that one of the most frustrating things is that we have a body of governments out there that are totally hamstrung in their development activity, whether it's education—we proposed last year that we go with a local education initiative and that tribes assume the responsibility on that reservation for operating their education programs. I immediately got a negative reaction. Part of it came from what I call the industry—the industry that runs education on the reservation was politically opposed to the tribal government. So I found out later that instead of contracting with tribal governments to run education, we've been contracting with school boards. Those school boards now are one of the biggest political entities on the reservation. They don't speak to the tribal government. Yet we have to deal with them on a direct basis while we're dealing with the tribal government on a direct basis.

The tribal governments must, must take control for what's going on on those reservations and be held accountable. It is not the fault of the Bureau of Indian Affairs that we have poverty, that we have children getting abused and high rates of alcoholism on the reservations. It is not our fault. I could spend $10 billion and it will not change those kinds of situations. I can have all the efficiencies in the world. I can run the best accounting system and construction program and it will not change those problems out there. Those problems will change when the people on that reservation decide that they want to change the way they live and when the tribal government decides that they're going to take hold of what's going on on that reservation and do what's necessary to change those conditions.

Now, there are lots of things that can be done and that tribes are doing. You can look at examples of tribes today from Opchin down to Seminole down on Florida and some of the tribes in the Northwest, Philip Martin down in Choctaw, that are doing things that people have said before are impossible to do. It's impossible to get

rid of alcoholism, it's impossible to bring jobs. I was recently on a reservation and I was explaining that it doesn't matter if you have an 80-percent unemployment rate if you have 80 percent of your people unemployable. And the response I got was well, look at John Doe, he lives out here 10 miles from nowhere, he has no ability to go in and get training, he's got a fifth grade education, so how do you expect him to get employed? And I said, "I don't. And neither should you." I cannot be responsible for taking a job to the fellow's front door, or taking an education to his front door. There are other problems that we have to address, but I don't know those problems nearly as well as the local tribal government knows them. That fellow needs a transportation system. He needs a way of getting someplace, whether it's education or into a job market. But to say that unemployment is the problem simply says that that's another way of getting money from the Federal Government and we would distribute it on the reservation is not solving the underlying problem—whether it's transportation, education, whether it's alcoholism or anything else that contributes to the unemployability of that individual.

So we see these statistics daily. But again the reason we're seeing them is because the Congress of the United States requires those statistics in order to give money to the reservation. You will continue seeing failure statistics as long as that is the process that we go through. You'll see success statistics when we start telling tribes that they're in charge and they can do what's necessary to clean up the reservations and to work their tribal governments, to get their people to go to work and to spend the dollars that are being appropriated for very good purposes but to spend them in a way that's effective to change the conditions that are out there. Unfortunately there are tribes across this Nation which are as different as night and day. They range from 15 in membership to 150,000. They range from millions of acres of land to no land. They range from an intellect level of zero to 150. So no one program works everywhere, and that's the point I'm making here. If we're going to commit $1 million of appropriated moneys to help solve problems out there, we have to let the people who have those problems develop the solutions and hold them accountable for those solutions.

Senator MURKOWSKI. Let me just follow up on that. I appreciate your elaboration and I think that you have appropriately presented the challenge before this committee. It's not enough to just put a Band-Aid on Indian self-determination but indeed whether we carry it far enough along to address the real cure, which is moving it down to the level of the Indian tribal councils and holding them responsible.

My question though, is in that process is there a necessity of accountability. As you pointed out, the degree of capability has to be different as are the specific needs, whether it's educational, economic, or what have you. We're dealing with Federal funds here and we're talking about—I assume—a concept where the tribal council would come in for request on a block grant proposal. Some would have greater capability of generating adequate information than others. Some would have to go out and contract for it. Regardless, there's a judgment made as to the justification of granting a

block grant to the applicant. Do we have to have an oversight to determine whether it's properly spent—if it was spent for a construction project did the tribal council go through the necessary steps of bonding architects and engineering so there was an assurance of completion? Or are we going to leave it up to the tribal council to sink or swim on the issue?

In other words, if they spend the money foolishly—if they don't take the necessary safeguards and checks and balances—and this is where I'm a little lost, Mr. Chairman—how do we grant this self-determination and still maintain whatever responsibility we have to ensure that the money is appropriately and properly spent?

Mr. SWIMMER. If the tribes provided us with a budget and said they were going to build a school building, we would also expect them to furnish with that the backup that you're talking about. They would have to show us the process that they're going through. I believe that would be understood. If they're going to operate a school, for instance, they have to have standards that are adopted and approved by the tribal council. They could adopt the state standards, they could develop their own standards, they could even use our standards—but we wouldn't simply give them the money and say "Go run a school." They must provide the standards.

Again, those kinds of things would be developed locally. They could hire experts to help them do this. I think the tribes would be responsible for that. I don't think they're given that flexibility today. We keep telling them that these are the standards you must follow. These are what we must follow and therefore you must do them. In a lot of cases they're not applicable.

The other point is that—and this is the fear and part of the reason why we also don't seem to reach success—and that is that there must be some assurance—and I understand that this is impossible in our form of government to give—but at least the wording needs to be there that the $1 billion in our budget today is an acceptable amount, or no less than that is acceptable to meet our commitment for the next 20 years or whatever it's going to be. The tribes are very worried that success means cutting the budget. If they are successful in bringing about social and economic development, there are hundreds of billions of dollars of things that are still needed, whether it's roads and infrastructure. The reservations and the local communities working together surely could spend all the money we could give them for 10 years. But the point is that they've got to start solving problems, but as the solve problems if we pull the money away as they perceive we will, that will defeat it and we'll go back to the failure system that says if I solve this problem I've got 10 failures over here, I still need the same amount of money.

So, if we go to the block grant concept there must be some assurances given and not as I understand an appropriation process, but in the authorizing committee perhaps—that it is not intended we're going to reduce the budget. We expect to have as part of these demonstration projects for the next five years a budget comparable to what we have this year. We would anticipate authorizing that amount of money and expect it to be there. Just so there's

some assurance to tribes that we're not going to pull the rug out from under them.

Senator MURKOWSKI. I grant you that, but by the same token there's a bit of a conflict between the concept of self- determination and advancement beyond a point as a consequence of the appropriate spending and the prioritization to meet the needs. Some will achieve a greater degree of self- determination at a faster rate than others depending on a lot of circumstances. You have to set, I assume, your priorities based on your monetary allocation on the basis of need.

In other words, you can't do the same thing for all tribes uniformly because they come in at different rates, they're at different areas of sophistication, they have different potentials. So you do this on the basis of need, but as the neediest progresses to a point, then I assume you reevaluate and you look to the other pending applications as to what their need is and this constant process of self- determination progresses—theoretically, under an ideal scenario.

Mr. SWIMMER. It would, but certain parts of our budget are relatively fixed. For instance, education is a third of our budget. We would not expect that ever to decrease, because it is in effect a replacement for the loss of local tax base. It is like 874. So it would be there, and that part of our budget wouldn't decrease. The trust portion of our budget probably wouldn't decrease. So the parts that have the potential for decreasing would probably be the third the provided social services, and that's $300 million. If there's some flexibility there I think we could manage that. But we're really talking about a zero budget that's pretty stable as far as need is concerned because it's funding those things across the board that are accepted as government responsibilities. Financial responsibilities, anyway.

Senator MURKOWSKI. Mr. Chairman, I thank you for giving us the opportunity for having this dialog. I think it represents fairly the neutral frustration of one who has worked with Alaska's Indian community for a long time and with Mr. Swimmer who obviously has the responsibility and a substantial one and the pleasure of the Chair, of course, it would seem to me that we might consider asking Swimmer to present the committee with a proposal for—outside of what we have before us, which is the block grant concept under the Indian Self-Determination Act—to somehow expedite this process to work more smoothly so that we could be more responsive. I assume you're talking about some type of reduction in the BIA's personnel costs, budget and oversight in the sense that if you're going to give them self-determination then you'd better practice what you preach by providing them with less of the process of the bureaucracy of oversight. It would seem to me that one who's lived with this menagerie, so to speak, is the most obvious one to come up with some constructive suggestions on how we can get from here to there in a more expeditious manner. Obviously the BIA has progressed over an extraordinary timeframe to what it is today. To increase the efficiency I think we have to hear from one who is dedicated to trying to be more responsive to the needs of America's Indian community.

I also have an opening statement I would ask to have included in the record.

I thank the witness and I thank the Chairman.

[Prepared statement of Senator Murkowski appears in appendix.]

The CHAIRMAN. Without objection, your statement will be made part of the record. I can assure my friend from Alaska that the discussion that we just heard is an important one. In fact, it gets to the core of the goal that we are hoping to achieve in this committee, and that is to give our Indian brothers and sisters their chance in the American sun.

There is enough fault to be shared by all of us. All of us have our dirty hands. But your response to one of the questions disturbs me a bit. In the ultimate, responsibility lies with the Tribal Council. I could agree with you, but as long as the Government of the United States would ignore the pleas of tribal councils like that of the Cochiti Pueblo when we built that dam against their wishes and now that the dam is destroying their lands we do nothing but instead try to shirk our responsibility and go to court and leave the bag in their hands—asst long as the laws of the United States are not fairly applied in such a way that a man like David Sohappy who consumes and harvests salmon on Indian territory in violation of laws and regulations—it is a violation—but to be convicted and sentenced to 5 years for catching salmon when others are released for murder after less than 1 year—I could go on and on like this, I think you will have problems.

I would hope that in our discussions here we would try to be as understanding of the problem from their side and I think you made a statement which I believe you would like to correct there—when you said that the intellectual level ranges from zero to 150. Unless you are suggesting that the genetics involved in native American Indians suggest that they are inferior people—

Mr. SWIMMER. It wasn't a scale of IQ. It was intended to be a reflection of some of the education problems that we have on the reservation and I'm not trying to imply at all that we have people who are deficient in that respect.

I also don't mean to imply that I am suggesting or recommending that we put tribes in the sink-or-swim position that was recommended years ago. We have put tribes in intolerable situations. I have worked 2 years now with an issue on Pyramid Lake. I've worked on issues involving tribes in Southern California and Arizona and other places where we have gone in and totally ignored tribal and individual Indian rights. But we cannot permit the fiduciary relationship of the United States to Indian tribes to continue to be the dependent relationship where tribes feel emasculated that they're not able to help themselves, that they are the sufferants of the Bureau or of this Government. They must have some freedom to deal with the problems and the attendant responsibility of helping people on the reservation so that problems begin to get solved there.

If they don't do that, then we must resume or take over that responsibility. My concern is that if we don't have a defined mission—if I am neither allowed to run what goes on there nor permit someone else to do it—that we don't accomplish anything because we don't know where we're going. If some other government is to

be necessary then we have to look at that. I think tribal government is capable—not across the board but many of them are—and the more that we begin permitting the flexibility to operate and the freedom to operate, the more success we'll see.

The CHAIRMAN. As you know, in a few weeks a Special Investigating Committee of this committee will begin hearings relating to allegations suggesting that Indian tribes and nations throughout this land have been either shortchanged or cheated out of a total of $11,700,000,000 in royalty payments, and that Indian tribes and nations have been deprived of certain things guaranteed under treaties. We have no way of knowing at this time as to the truth or veracity of these allegations, but we will soon find out.

If these allegations are correct, and many suggest that they are correct, then I think the Government of the United States certainly has very dirty hands. And this committee is prepared to do something to wash those hands.

I thank you very much, Mr. Secretary. As always, you have been most helpful. As suggested by our distinguished colleague from Alaska we would invite you to submit to us any paper or any memorandum you may wish to prepare, suggesting how we can improve our relationship with the Indian nations.

Mr. SWIMMER. Thank you.

The CHAIRMAN. Thank you very much.

Our next panel consist of Mr. Lionel John, Executive Director of the United South and Eastern Tribes of Nashville, Tennessee; the Honorable Melvin Sampson, Chairman of the Tribal Council of the Yakima Indian Nation of Toppenish, Washington; and Ms. Delia Antone, member of the Board of Directors, Intertribal Council of Arizona, Phoenix, Arizona.

Mr. John, welcome again, sir.

STATEMENT OF MR. LIONEL JOHN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN

Mr. JOHN. Good afternoon, Mr. Chairman, members, staff of the committee.

I have today two written documents. I have one that was handed to me by the Miccisukee Tribe of Florida, which I have submitted for the record, and I have the one that USET is presenting—the United South and Eastern Tribes—is presenting.

The CHAIRMAN. Without objection, that full statement and the addendum will be made part of the record.

Mr. JOHN. Thank you.

First, I'm going to start my remarks by addressing S. 1703. We at USET have worked long and hard for the passage of S. 1703, the Public Law 93-638 Amendments. I think it was November when we learned that S. 209 had been added just prior to markup, and USET met on December 15 in a special session, and at that time determined that they wanted S. 209 deleted from 1703.

USET was concerned about two major problems concerning S. 209 before it became section 301. It was concerned because we felt that there was controversy surrounding that issue and that perhaps that type of a section included in a consideration of S. 1703

would cause delays in the immediate passage of a much-needed bill.

We also were worried that the section had been thrown in a little carelessly by the assistant secretary; that he did it as a reactionary measure in reaction to the Arizona Republic circumstance. We don't think it was very well thought out when it was put together.

Now, time has passed and section 301 has been submitted for consideration. USET maintains its position and wants section 301 deleted from consideration of S. 1703 for the very same reasons that I've described.

USET is in town this week meeting. Yesterday we listened to Congressional representatives and I think even more now we worry about the situation of this delay. We heard that if section 301 remains in the bill that the House is going to call for hearings. We understand that the Education Committees are going to take jurisdiction over the bill. Now we have Mr. Melcher's amendment to consider.

All this represents to us substantial delay on the passage of S. 1703. We think that's intolerable. We think that S. 1703 needs to move expeditiously without these sections being added.

We think that the idea presented by Mr. Swimmer is a good idea in that we need to be exploring and trying to figure out ways whereby we can have better programs, more meaningful results on a reservation. But we think that in line with this that there may not be necessary at this time to include language. We think the secretary has the authority vested in his office that he can proceed with demonstration projects, that he can proceed with funding grants, and that he has been provided in the continuing resolution for the FIEE appropriation with moneys to enable these projects to get under way.

We fully endorse and support the 10 tribes in their efforts. But we would like to see these tribes proceed with an experimental project of this nature.

We think that after the study work has been undertaken and some results are forthcoming, then perhaps we might assess what has happened and maybe from that determine what appropriate changes should be made to any legislation. As we understand Mr. Swimmer, he spoke to us yesterday and said that he doesn't feel he has the authority to just hand money over to the tribes, money that is designated as program money. He thinks that he needs legislation to do that. That may be so. But we think that we should find out exactly what he needs and try to get the proper language to enact whatever it is that this demonstration project will produce.

We worry about the adventure of taking $1 million and just arbitrarily dividing it in tenths and issuing it out to tribes. We worry because we don't think that $100,000 cuts will necessarily do the job that is necessary in this case. We worry on behalf of the tribes. Tribes are stressed for finances these days and have been. In their excitement to undertake this endeavor, they may commit tribal funds which are further going to strain the tribal abilities.

We think perhaps maybe some thought should be given to possibly facing the project of making these studies and perhaps maybe

in the first place some consideration should be given to making an assessment to what this total job is going to entail. We don't know that today. But we certainly hope that these 10 tribes will reach out and see if we can figure that out.

We also are concerned of course that the selection process for 10 tribes was inappropriate. The tribes not comprised, you said, were very disappointed that they were not afforded an opportunity to participate. We have always felt that we had much to contribute. Even now, even though we haven't been designated, we would still like to contribute however we could to the success of these 10 tribes.

We have another concern with respect to what's being proposed here. We understand the Assistant Secretary indicated that the money ultimately would be going into block grants. I remember a time—I was tribal leader at the time, about 5 years ago or thereabouts—when the Administration proposed block grants. They proposed it to the States, they proposed it to Indian tribes. I remember that we fought vigorously against block grants because we anticipated that that was a limb that was going to be sawed off behind us.

Now we're talking about block grants again. We worry that this same situation may be developing. I think the tribes have fought too hard to take this into consideration again.

We also—in consideration of this type of adventure—find something lacking. We think it ought to be included in the study work. Until this afternoon, when I listened to some of the comments earlier made by the Assistant Secretary, I had never heard any mention made of any reductions or any alterations of the bureaucracy. It was always "You tribes—you do something. You change something. But never mind the bureaucracy. Leave it stand." Even though everybody seems to agree that it doesn't perform adequately. I think the study work should definitely take a look at what the bureaucracy isn't doing and include that into the work of how this thing should be reprogrammed and reconditioned.

Maybe then we'll start to realize some real gains. We feel that the bureaucracy is embedded in a quagmire that it doesn't have the ability or the desire to pull itself out of because it's self-perpetuating.

We understand that if Indians are kept poor, if Indians are kept wanting, if there are failures, then there's always going to be a need for the bureaucracy, a need for jobs for those people. We don't think that should be the driving force behind what makes the Bureau of Indian Affairs operate.

So I think in taking consideration of this issue one of the recommendations we would have is that these sections all be deleted and that perhaps new legislation should be introduced to concentrate on this specific issue. Take it in a measured way so that we can get positive results in the long run. And let's please clear the path so that S. 1703 can proceed. We've waited far too long for any action concerning improvements on the Public Law 93-638 process. We don't think that this endeavor needs to be included in the Public Law 93-638 considerations today.

So with that, Mr. Chairman, again I want to reiterate that we fully endorse these tribes and that we wish them most success in

their endeavors. And if ever an opportunity were opened that we could participate more, I'm more than willing to do that. I thank you for your time today.

[Prepared statement of Mr. John appears in appendix.]

[Statement of the Miccosukee Tribe appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. John. We will ask questions after the panel has completed.

Our next witness is the Chairman of the Yakima Indian Nation, the Honorable Melvin Sampson. Chairman Sampson, before you make your presentation, I am certain that many of us here would like to know the status of one of the members of your nation, Mr. Sohappy. What is his present status?

Mr. SAMPSON. My source of information, whom I have no reason not to believe, informs me as of late yesterday afternoon the Bureau of Prisons is proposing conceivably the latter part of this week or the first part of next week to file the motion based upon the information that was compiled up to last week on behalf both of Sohappy Sr. and Sohappy Jr. for their release contingent upon I presume the statement that they had entered into basically which reiterated their liability to abide by tribal law. This is to be filed—at least the procedure as I understand it—to the judge in this case, Judge Tanner, who will then take it under consideration. I have no insight on how long it would take him to take an appropriate action on it. You could probably cause that to be expedited. [Laughter.]

Is that OK?

The CHAIRMAN. Whenever lawyers are involved, it takes an extraordinary effort to expedite something, but I am glad that Mr. Sohappy and his son will be soon back with the people of the Yakima Nation. I would expect them to be with you about 1 week from now.

Mr. SAMPSON. I would hope so.

STATEMENT OF HON. MELVIN SAMPSON, TRIBAL COUNCIL CHAIRMAN, YAKIMA INDIAN NATION, TOPPENISH, WA

Mr. SAMPSON. Thank you then, Mr. Chairman and Mr. Vice Chairman of the committee and representations from the other members of the committee. I am pleased to be able to make a presentation here on S. 1703 and specifically in this case the proposed amendment of section 301.

I want to make special commendation to the committee as well as to the staff members who—especially on S. 1703—did a considerable amount of work working with various tribal representations in getting S. 1703 to the state it's at today. I appreciate that activity.

We feel that the thrust of both S. 1703 and the section 301 appear to be quite simple on surface: to make Indian self-determination a reality and to allow the Indian Self-Determination and Education Assistance Act to be utilized specifically in a manner that as we understand it that Congress and tribes wanted it to be when it was initially passed.

My feeling on section 301 are going to sound a bit contradictory, but it's the only position that we can derive—at least at Yakima—that we feel will both protect my people on the Yakima Reserva-

tion and hopefully will address the larger picture regarding the substance of the proposed amendment.

We feel that if Congress is going to enact section 301 into law as presently drafted, I request that it be amended to include the Yakima Indian Nation. The combination of the deletion of section 209—which we support—and the addition of section 301 as presently drafted would have the effect of statutorily prohibiting the Yakima and other tribes from participating in block grants for the next half decade. This is of a concern to us.

If there is going to be a block grant or a consolidated funding project, the Yakima Indian Nation would like to be a part of it, particularly if it will protect the trust relationship existing between the tribes and the Federal Government.

What was first proposed by the assistant secretary as Lionel so distinctly alluded to appeared to be an attempt to reduce or eliminate the Government's responsibility toward tribes. I do however think that more thought needs to be put into determining how trust responsibility will be implemented in a block grant concept or process. We as a treaty tribe feel very strongly that the Federal Government has a legal commitment that must not be reduced and we appreciate the dialog that we were able to witness here earlier.

The Yakima Indian Nation also participates currently in Public Law 93-638, and we presently have a large number of contracts with both the Bureau and the Indian Health Service. As such, we feel that we would be ideally suited to be a part of the demonstration project. We are particularly desirous of being included in the 2-year planning process authorized by section B of the amendment. Since Public Law 93-638 was first implemented there really has not been a comprehensive planning process to assist tribes in planning for contracting—either regular contracting or the proposed block grant concept. It would be extremely helpful to us if we could participate in such a planning process.

While we realize that the $1 million appropriated for the 10 specifically identified tribes has been allocated to these 10 tribes, we have no desire in reducing the funds that they are proposed to receive. We also will be approaching Congress this fiscal year in seeking funds so we can then participate in the planning process. We therefore ask the Senate Indian Affairs Committee to amend section B to include the Yakima Indian Nation.

We believe that the planning phases must include an assessment of the needs and resources of the tribes in a determination as to what level of funding would be necessary to adequately meet those needs and manage those resources.

There seems to be an orientation now toward dividing up the BIA budget regardless of the adequacy of the budget in establishing the consolidated contract concept. Mr. Chairman, I am not convinced that including section 301 is the wisest course to pursue, but I defer to the committee members in making political judgment calls on how to get S. 1703 enacted into law. I am convinced that we are opening the floodgates to numerous other amendments that have been proposed if we do not simply take S. 1703 to the floor, strip section 209 and pass it in that form that it now exists in.

I do not specifically understand why anything more than 2 year planning sections should be enacted into law at this time. It seems

that what was envisioned by the Appropriations Committee and was contained in section B of the proposed amendment was basically a study and planning process oriented toward implementing consolidated funding. Why then are we enacting into law an actual block grant itself before the study has been commenced, not to mention before we have had the benefit of reviewing the results of the study and the proposed plan?

I cannot imagine that the knowledge that will be gained in the next two years will not place us all in a better position to draft and enact the type of language presently envisioned in subsection C and D. But what is the rush at this particular point in time been to incorporate that particular language in this amendment? Why can't we have time to look at this block grant concept much more carefully than we have thus far?

I relate to the oversight hearings that were held in the House that apparently led to the fiscal year 1988 planning money being appropriated where one of the Indian witnesses said that there were at least 200 questions that have to be asked and answered before implementing block grants. Today I would say that about five questions have been asked and answered and another 50 created.

For instance, under section D, part 3, all provisions of law and regulations that would conflict with the demonstration project are waived. Do we really want this? My tribe just spent thousands of dollars in man-hours to get into compliance with the Single Audit Act. Is the intent of this language to waive the accountability of the Single Audit Act and other such accounting provisions? Is this the intent?

As we understand it, the studies of block grants to date have demonstrated the need for more accountability, not less accountability.

One of the other concerns that I have within section 301 is how it will affect other tribes. The language in section F stating that the block grant project will not affect other tribes is nice but potentially in conflict with section D of the proposed amendment. If the consolidating funding mechanism as envisioned in section 301 were fully enacted and the four participating tribes in our area, the Portland Area, were to include for instance forestry in their consolidated funding mechanisms, including their pro rata share of BIA forestry dollars in both the Central and Area offices, it is difficult to envision that this would not have an impact or an effect on non-participating forestry tribes in the Portland area.

The assistant secretary has indicated that if enough tribes were to participate to the point where the agency and area office's budgets were affected, he would consolidate and realign those offices. Clearly this would affect other tribes in this particular case in the Portland area.

I also think that the committee should give thought and direction to how contract support funds would be effected by section 301, and to what aspects of the block grant should indirect cost funds be applied. As contract support funds are presently pooled in the BIA, any change in the pool as a result of section 301 would clearly affect all other tribes.

I therefore then ask the committee to consider amending sections A and B by allowing the Yakima Nation and other interested tribes to be able to participate and deleting sections C and D at this particular time. However, if the enactment of sections A and B would slow the bill down or hurt its chances of final passage, we would urge that none of the proposed sections of 301 be included and that section 301 be introduced as a separate bill.

This concludes my comments, and as you can see I have mixed feelings. I do not want the Yakima Indian Nation to be perceived as throwing a roadblock in front of an attempt to give control over BIA programs to the tribes themselves, yet I am adamant that if such a proposal is to be implemented, we don't want to be left standing in the station.

I think this committee has some political judgments to make, some key calls being whether we have gotten ahead of ourselves, whether the language in subsections C and D need to be enacted now, and whether the consolidated funding language can't be introduced as a separate bill.

Numerous amendments are now being proposed to S. 1703 that will ultimately delay if not kill this very positive legislation. We cannot let this happen: S. 1703 is too important a bill for all of Indian country.

That concludes my prepared statement. Thank you.

[Prepared statement of Mr. Sampson appears in appendix.]

The CHAIRMAN. Our next witness is Ms. Delia Antone, member of the Board of Directors, Intertribal Council of Arizona.

STATEMENT OF DELIA ANTONE, MEMBER OF THE BOARD OF DIRECTORS, INTERTRIBAL COUNCIL OF ARIZONA

Ms. ANTONE. Mr. Chairman, Mr. Vice Chairman, members of the committee and staff. I would like to read a statement for the Intertribal Council of Arizona regarding S. 1703.

The Inter-Tribal Council of Arizona representing 19 tribes opposes section 209 of S. 1703 as reported. Attached is ITCA resolution respecting section 209. This resolution was also adopted by the Inter-Tribal Council of Nevada, representing 24 tribal groups. Our statement is also submitted on behalf of the Siletz Tribes of Oregon, the Tulalip Tribes of Washington, the Leech Lake Bank of Chippewa, and the White Earth Bank of Chippewa, both of Minnesota.

We understand the purpose of this hearing is to consider two amendments to S. 1703 in the nature of substitutes for section 209. ITCA also opposes amendment No. 1399 which was introduced by Senator Evans on February 3, and an amendment which was introduced by Senator Melcher on February 17. Of the two amendments, we prefer Senator Melcher's. We understand the Evans amendment will not be moved unless there is a general agreement to support it. We oppose it on several grounds and urge that it not be offered.

First, it is a controversial special interest legislation which has no place on a bill of national Indian concern, and it could serve to invite a host of other controversial special interest amendments.

Second, the Evans amendment to this already belated bill will only serve to delay it more. We are informed that the House Interior Committee would almost certainly hold hearings on S. 1703 if it passes the Senate with the Evans amendment attached. Further delay could prove costly to the tribes if they are forced to wait even longer for the needed reforms provided in S. 1703.

Third, it is unnecessary for the 10 tribes that advocate the amendment to use S. 1703 as a vehicle. The fiscal year 1988 Conference Report which accompanies H.J. Res. 395 earmarks $1 million for research and planning grants to those tribes. Thus unless these funds are rescinded or reprogrammed by Congress, adequate moneys will be available to them. If those tribes require authorizing legislation, we suggest that Senator Evans introduce a separate bill in order not to cause further gratuitous delays to S. 1703.

Fourth, we are deeply concerned about what precedents the Evans amendment could set which might have adverse long-range impact on Arizona and other tribes. For example, it would grant the secretary extraordinary discretion to allocate funds to certain Indian tribes or to withhold funds if negotiations fail. And it signals to the public, tribes, and to the Executive Branch that Congress now views the Federal commitment to Indian tribes as a matter of special revenue sharing rather than a solemn moral obligation to Indian people. We see no public good to be served by circumventing the normal appropriation process or weakening the moral basis of the Federal commitment.

Fifth, the Evans amendment would lend further support to the notion that in the name of change it is appropriate for Congress to reduce base funding for those tribes who had banded some of their fiscal year 1988 funds under the Indian priority system for Self-Determination Grants in order to perform programmatic initiatives and to swich the funds for those tribes to other tribes that had not banded their funds to conduct research in planning, affording them a windfall.

With respect to the Melcher amendment, we are pleased to see that it would not authorize implementation of any initiatives except as agreed to by Congress. We do however oppose the adoption of a Congressional standard which suggests that it may be appropriate to use as much of the research and planning funds for the payment of attorneys fees as may be paid for attorneys fees from judgments against the United States by the Court of Claims. We also are concerned that the Melcher amendment would delay enactment of S. 1703 and would lend further support to those funding inequities which are cited in our fifth objection to the Evans amendment.

Certainly, however, if the inequities are to remain, it would be far better to share the windfall more widely as Senator Melcher proposes, but priority for the use of the funds should be granted to those tribes whose base was diminished by the original earmarking of $1 million for planning and research.

We urge sponsors of the two amendments not to offer them and instead to join simply in moving to strike section 209.

That is the statement and I thank you for your time.

[Prepared statement of Ms. Antone appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Antone. As I did earlier, I just want to reiterate my observation that the 10 tribes who are listed were the only ones expressing interest during the House proceeding, and the House took it upon itself to suggest that the demonstration project just cover the 10 tribes.

Second, we believe Secretary Swimmer's contention that if this type of authority is not legislated, the Bureau of Indian Affairs has no authority to spend $1 million that was appropriated in the continuing resolution. Keeping those things in mind, we thought that we would consider the amendments that were proposed by Senator Evans and Senator Melcher.

Finally, I would like to assure all of you that everything will be done to expedite this matter. After all, this is part of the initiative of this committee in wanting to work with the Indian nations—coming forth with some sort of program. This is an example of the type of work we would like to do, where the suggestions come from Indian country and not from Washington.

All of the major provisions in this bill came from the tribes and nations throughout this land. We have no intention to set this aside.

I can give you my word that this bill will pass the Senate in due time.

However, as I indicated at the beginning, the record will be kept open until the close of business March 4 for those of you who may have additional remarks and statements to present to the committee.

I would like to thank the panel very much for their assistance this afternoon. If I may, I would like to call a short recess—in 5 minutes we will be back.

[Recess.]

The CHAIRMAN. Our third panel this afternoon consists of the president of the Quinault Indian Nation of Taholah, WA, the Honorable Joe De La Cruz; the president of the Tlingit-Haida Indian Tribes of Alaska, Juneau, AK, the Honorable Ed Thomas; and the president of the Rosebud Sioux Tribe of Rosebud, SD, the Honorable Alex Lunderman.

President De La Cruz.

STATEMENT OF HON. JOE DE LA CRUZ, PRESIDENT, QUINAULT INDIAN NATION, TAHOLAH, WA

Mr. DE LA CRUZ. Mr. Chairman, again it's a pleasure and an honor for me to come before your committee over what I feel is a very important issue for all Indian nations and Indian country.

I want to point out for the record that I've lived on a Quinault Indian Reservation all my life. I was on furlough for 3 years for military service from my nation, and I was on furlough for 4 years to go to college, but I've lived in the same community all my life. I've been the Chairman of the Quinault Indian Nation for going on 20 years.

The issue before us today is to take a look at furthering what we started several years ago when we had a commission take a look at the legislative history and the executive history and the relationship of the Indian tribes. We were able to bring about the Self-De-

termination Act Public Law 93-638. I was involved in the development of that act with hearings throughout this country, and I want to point out on the amendment we're speaking of today—I wonder if we would be here today if it were not for the initiatives taken by tribes. After all the studies and task force dollars that were spent by the Bureau of Indian Affairs under Secretary Girard, looking at the impediments and problems of Public Law 93-638 and dollars that were spent under Undersecretary Smith looking at impediments and problems with costs—if it was not for the initiative of some tribes in the Pacific Northwest to appoint a task force of some of our own technical people: their names, for the record: Lloyd Clune, the financial manager for the Columbia Inter-Tribal Fish Commission; Jim Zemore, a CPA that worked with the Warm Springs Tribe; Bob Peterson, a CPA that worked with the Suquamish Tribe; Ron Allen, the Chairman of the James Town Kallum Tribe, who has a background in financial management and business administration; Ken Smith, and other technical people from the tribes. It was that task force that did one of the most extensive analyses and researches on the problems of Public Law 93-638, the task force published a blue book that they distributed; they came back and met with staff at both the House and the Senate; and we came up with the amendments that are now S. 1703.

I chaired as a policy oversight for that task force. I wholeheartedly support the amendments to S. 1703 to help streamline some of the problems and things that we've had with Public Law 93-638.

Today I've submitted written testimony, and I'm kind of amazed at the understandings that come out today on an effort to try to move as I look at it the next step that is long overdue in the course of self-determination of an Indian tribe, Indian community. Governing themselves, governing their territory, and doing the necessary things that government—regulatory things—needs to do.

The committee and my tribe—I testified at the hearings at House Appropriations Committee chaired by Congessman Yates—10 tribes submitting letters of intent to go into this demonstration project—and you emphasize it is a demonstration project. We completely objected to the amendments that were submitted and accepted that Mr. Swimmer submitted. I want the committee and the record and people in this room to know that section 301 that was submitted by Vice Chairman Evans was an amendment that was drafted by technical and legal people and 10 tribal chairmen oversight. Going into this demonstration project we see that we need the language in section 301 that we felt from our experience would protect us as we moved into a demonstration project.

We also felt that there needs to be plenty of money, because again there are areas that were looked at by past studies—which spent millions of dollars—nobody said anything. There are areas and levels and layers of the Bureau that people identify as 7 percent or 12 percent Bureau administrative costs. It's those types of hearings which will be needed to find money to do the type of research to find what we're really talking about. What are we talking about if we're going to take over a whole program that would allow us to take our entitlement of a percentage out of an agency, out of an area, a percentage out of the national Central Office, whether it be the BIA or whomever we're dealing with. Nobody's

been able to identify that. We've had study after study, there have been figures on the table after those studies, but the only way we're going feel comfortable with it is to have it looked at from a tribal perspective.

As one of the participating tribes I feel very strongly that we need this demonstration project title 3, section 301. I guess if it's not 10 tribes, if it's 20 tribes, the question that comes to my mind is when and who? At some point in time, we have to make a move into taking a look at the next step and the next move toward self-determination.

I think in my written testimony I've covered several of the areas that I feel very keenly about. One of the other issues that keeps coming up in this—and I don't like the terminology, I think Indian people get caught up in terminology—is the block grant concept. I've been trained and raised to operate as the president of the Quinault Nation that we operate from our treaty. The Quinault people gave up 6 million acres of land that is now the Olympic National Forest—the Olympic National Park—and because of that treaty the United States has certain obligations to the Quinault people.

In a block grant concept I feel we're talking about a grant in aid concept to Indian people. That is an obligation of the United States based on the territories we gave up, based on what's in the treaties, based on what's in history of legislation and the Constitution of the United States.

Now I'll be happy to answer any questions of the committee.

[Prepared statement of Mr. De La Cruz appears in appendix.]

The CHAIRMAN. Thank you very much, President De La Cruz. Our next witness, President Thomas.

STATEMENT OF HON. ED THOMAS, PRESIDENT, TLINGIT-HAIDA INDIAN TRIBES OF ALASKA, JUNEAU, AK, ACCOMPANIED BY MARK JACOBS, COUNCILMEMBER

Mr. THOMAS. Thank you, Mr. Chairman. My name is Edward Thomas. I am the president of the Tlingit-Haida Central Council, out of Juneau, AK. I have with me councilmember Mark Jacobs and if time permits we would like to have him make a few comments also.

I find myself in a very awkward situation. I find myself very excited about the opportunities and solutions that are provided by S. 1703, and I'm also very excited about some concepts of modifying the way the Government does things at a time when money's short. But I can understand why some other tribes are concerned about the demonstration project also, particularly when we find ourselves agreeing with our systems secretary—then other tribes get suspicious that maybe we're in cahoots or something. Well, I certainly can appreciate that posture because I have for one objected when other tribes have gotten windfalls, so to speak, as in earlier testimony.

For the record, historically I fought very strongly when the new administration came on with the block grant concept. The way that Tlingit-Haida perceives that we get involved in this project would not be a block grant concept but to reduce a layer of administra-

tion of the Bureau of Indian Affairs. But when you start doing that kind of thing there are effects and countereffects to other tribes in your area, your tribal members, and the legal framework which tribes enter into. So I think it's very timely that we get into a demonstration project.

Now, I need to emphasize "demonstration" because that's what it's intended to be. It's not intended to be the end of something or the beginning of something else; it's intended to try out something, to test the waters on behalf of Indian tribes, specifically my tribe and my people, so that we can see as we have asserted over time that we can administer those programs better than the Bureau people who are caught up in the quagmire of regulations alluded to in earlier testimoneys.

Now I want to point out also that I personally support and commend this committee in the leadership role that it took in developing S. 1703. The staff has done a commendable job and I'm very pleased with the product since it will have long-term solutions to some ongoing problems that we've encountered since 1975 when we got into the self-determination contracting process.

I was involved in an earlier task force committee that worked with this staff, and I know their capacities and capabilities. I did provide some input and I am pleased that some of the things that we talked about became a part of this policy that will be adopted very shortly.

I urge that no matter what happens to section 209, section 301, or whatever you want to call it, this demonstration thing, that we need to move forward with S. 1703. I hope that we don't get so caught up in a we/they type of thing—I think that as we demonstrate something, one other thing that we need to demonstrate is that we are working on a concept that hopefully will benefit all people who are involved in these problems.

I think that if I were to look at the substitute provisions or the section that was proposed by Senator Melcher, I think that there's some merit to what is being said there, and therefore I request this committee to maybe influence other committees to provide possibly another $1 million for the purposes of inviting other tribes to go under a contract or a demonstration approach as outlined in that substitute language whereby they would then become subjugated to the criteria set up by the Bureau of Indian Affairs as this would do.

Now, I think that I heard through the grapevine that there are concerns that as we get these dollars it's going to create a windfall for a bunch of lawyers. I think that to a degree some of that happens. I'll be the first to admit that I don't understand all the laws that govern the country—not even the Indian laws. But I think that if we're going to provide a meaningful solution that will have long-term benefits to Indian tribes and still protect the trust relationship, we've got to do it through a good solid legal framework that protects us all.

And I think that I would be the first to say that if I didn't get a dime in any of this process, I still can do the financial allocation of any moneys that was reduced from the Bureau of Indian Affairs administrative levels. I know how to do that; I've done it for years and my people know how to do it. We have historically involved

our people in the process of deciding on what our priorities in our tribe are, and we intend to continue to do that no matter what happens in this process here.

We do need to have the opportunity from our point of view to protect our legal framework that now is the basis for our relationship with the Federal Government.

I want to point out also that I do have relatively good support from my Alaskan constituency; I have shared the proposal that I have generated for the purposes of this program, and I shared it fairly broadly in our State. There are some concerns. As you heard today, there are concerns here. And that leads even more to why we need to have demonstration projects like this. There are concerns out there and if we never do anything, we're never going to progress and get better at it.

I think that if we have a few tribes who are willing to put the leading edge on progress in the area of streamlining the bureaucracy to the benefit of Indian tribes, I think that we ought to support that thing. I would be here in support of section 301 because it provides so many directives to the administration in allowing the demonstration projects to proceed and be meaningful. I think other substitutes go back and try to put the burden back on the Bureau to decide who would compete against whom and under what criteria would they be selected.

I know that if I was to compete against another tribe that worked more closely with our area director, I couldn't compete because I've given him too much trouble over the years. I know he doesn't like some of the things that I'm trying to do.

No matter how good writers my people are, and no matter how much experience I've had in writing proposals, and we've written a lot of them, we could never compete with some of these tribes on the right-hand side of the area director for a demonstration project of this nature.

Mr. Chairman, once again I appreciate your attention and your time in listening to our concerns and our commitment in trying to work with you and other tribes so that we can have a better system in dealing with the needs of our people. I hope that throughout time we can get there and we can continue to get your support in our effort to do that.

[Prepared statement of Mr. Thomas appears in appendix.]

The CHAIRMAN. Thank you, Mr. Thomas. Now we will hear from President Lunderman.

STATEMENT OF HON. ALEX LUNDERMAN, PRESIDENT, ROSEBUD SIOUX TRIBE, ROSEBUD, SD

Mr. LUNDERMAN. Good afternoon—or is it evening? Mr. Chairman, members of this committee, my name is Alex Lunderman. I'm the elected president of the Rosebud Sioux Tribe.

Mr. Chairman, I really don't like to read these things as I said before. I have people that write these things for me, and I go over them. I like what is said here, but I would like—

I'm here because of S. 1703, and 1 year and possibly 1½ years and maybe 12 years, that tribes have been faced with overrecoveries, underrecoveries, which a lot of us really do not understand.

Therefore I brought the Rosebud Sioux Tribe's expert along with myself, who will be with us on this demonstration project. He knows all the answers, he's been one of them and I mean them as BIA for 31 years, so he has the credentials. We really don't need the big attorneys to do all the policy analysis and all that. He can do that himself. He's good, by George.

Anyway, there was some words that were said earlier, and I tend to get upset when I hear things. For the record again, I would like to introduce the Rosebud Sioux Tribe's constitution bylaws, corporate charter and the Indian Reorganization Act of June 18, 1934, which is what we live by. We try to. In there are all the safeguards that we talk about. They're built in there and the responsibilities are in there.

Now, I've heard a lot of things about education but that's in there also. Tribal Councils issue charters. Who monitors them? Everything's in this book, and if we just follow this book I think our problem would be resolved. We need to remember that in 1934 or 1920, prior to 1934, our grandfathers after years of deliberation and being in front of Congressional people, have come up with this book. This was put in by my grandfather. No matter how much I condemn him in my mind, I'm a product of him. He put this in place for thinkers, people of wisdom. They were elders who put this in place. It's this that through the process of education or civilization we lost sight of our culture and our tradition. Now, we can argue about everything. We have five Federal programs that come through the State of South Dakota—we want them to be under us, the tribes. The Department of Transportation, by law, we can't do that. The others, we can, so they say, so we've applied for an application.

I want to refer to a statement of—I think it was October 27—our leader Mr. Hodell. He stated that the old ways are not getting results. I think that's the bottom line to why we're here. We feel that we ourselves—and I said this from the beginning—have the solutions. We have the expertise. We have educated ourselves and we need to expand and use this knowledge. But we need to look at the policies, the statutes. That's why we have gentlemen like Mr. Shellhammer aboard—to help us with that—and your able staff have been working with us.

These are the things that I see. I have a grandmother who's 90 years old. Her name is Katie Blue Thunder. She stays in a senior citizens complex that's fenced up. However, she gets very upset if us grandchildren don't go there and take her out of there. So she only stays there. But one of my aunts or grandchildren, stays there with her too, to keep her company. But she doesn't stay there all day long, or all week. She makes darned sure that one of us gets there and takes her out and takes her to our homes.

Now, for her to stay there and qualify for some benefits, elderly nutrition, transportation, commodities—she has to stay there. That's not our way. We're saying that demonstration tribes are models. We can produce a better way to service our people and to help ourselves become more efficient.

I refer to our Preamble when I refer to these Bylaws: "Under and by virtue of our Creator and his Divine Providence, we the enrolled members of the Rosebud Sioux Tribe of Indians, of the Rose-

bud Indian Reservation, in the State of South Dakota, in order to establish a united Tribal organization, to establish justice, to ensure tranquillity and enjoy the blessings of freedom and liberty, to conserve our tribal property, to develop our common resources, and to promote the best welfare of the present generation and our posterity, in education and industry, do hereby adopt and establish the constitution and bylaws."

Now, there's a lot of hard feelings about the traditional councils back home when this was voted upon. I'm not condemning anyone. But I feel that today we chose to pick up a gauntlet. It was offered at a hearing in October. It wasn't offered by Congressman Yates—it was offered by a man sitting next to him. I still don't know who he is. Maybe I'll find out before this day is over. He had a navy blue suit on with a red tie. He's the guy that said "Do you feel what happened if we dropped this on you?" He said, "Let's go with it." I remember that, and I remember some other meetings.

We had one in Albuquerque, and we 10 decided no one is going to pit us against each other. If anything's going to jeopardize S. 1703, what do we do? It was stated earlier.

Then we met up here on January 21 and 22. Some of the BIA people were there and some staff people from this committee were there, and we 10 tribes for 2 days hashed out section 209 and section 301. I felt then that we resolved something. I still believe in words of honor. Now later on January 22, that afternoon, each tribe had a meeting with Pat Ragsdale at the BIA office, 20 minutes apart. When I walked into that meeting I informed Mr. Ragsdale that earlier this morning we 10 were together and we were—myself, I was very arrogant that morning because I had the other 9 tribes with me and I felt tough—however, that afternoon I informed Mr. Ragsdale that look, I'm not the same guy. I'm here to cry and beg like always.

Well, as kind of a joke. That's the way it's been. But I've heard testimony of some supporting us, some supporting amendments, but again I'm back to the meetings in Albuquerque on January 21 and 22, and also remember what was said on October 27, that started this whole process.

Now, if you want to divide that $1 million among 370 tribes, so be it. That'll only pay for two trips for me to DC to testify on March 2 and 3, and cry for some more money. That's what will happen. But we in good faith undertook this venture. It's a challenge, sure. I'm catching a lot of flak at home, which is fine. People in our positions understood very well what would be coming on any issue when we ran for office.

But I again would like to get back to what S. 1703 is really about and why Mr. Shellhammer and other tribes need this bill passed. Thank you very much for listening to me.

[Prepared statement of Mr. Lunderman appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. President.

Senator Evans.

Senator EVANS. I'm sorry I was out of the room—I had a phone call connected before people went to bed overseas—but I missed an opportunity to speak to the previous panel, and I don't know whether any of them are still in the room or not. I think that the message will get back though. First let me commend all of you sit-

ting at the table for the initiative and the determination and the willingness to try something new to see if we can't provide something better. Frankly I'm confident that you'll show us and others how to do it better, and maybe we'll start to untangle some of that spaghetti that Senator Murkowski talked about that we've gotten ourselves tangled into.

I don't think the blame can be laid at anyone's affairs. The Bureau of Indian Affairs has an extraordinarily difficult task because they have to operate with compilation of laws we have added over the last century without amending, changing, or making easier any of those laws—we just keep piling one on top of another.

Frankly, I was disappointed at the testimony of the panel just before this one. It would seem to me in sort of two parts. We don't like the idea that anyone should try the demonstration project. But if you're going ahead, count us in. Well, you can't have it both ways. I think there is a good deal to be said for those who in response to a broadly advertised request to join with us in trying to develop something through Indian tribal leadership now we've come back with something which may well need to be perfected. There's been some good testimony here today on new things that will make an even better opportunity.

To now go back to what some would like, I guess, to the status quo. There's an awful lot of little baiiiwicks being protected by some, and I saw that in the suggestion and the amendment by Senator Melcher that all of education be left out of this thing. I'm not persuaded at this time that this is the right idea. I'll ask some of you in a few moments whether that is or not.

It seems to me that for a demonstration project—as far as this Senator is concerned, and I'm sure as far as the chairman is concerned—the words in there which talk about no adverse effects on other tribes is just what it says. We better not see any of that kind of adverse effects on other tribes come as a result of any demonstration project that proceeds forward.

Second, if this proves to be worthwhile, of course it ought to be expanded. It ought to be worthwhile, we'll help in getting things either back to where they are or getting them to a third direction that proves to be even better. If you don't try something that is better than a system which today has almost universal dislike or complaints attached to it, how can we ever find anything that's better?

My commendation to all of you for your willingness to venture out on this thing.

Let me start, Joe, with you. For your own tribal purposes how are things sorted out now? What does BIA handle, what do you as a tribe handle, and in a demonstration project or in a consolidation do you think that some or all or any of the educational elements would be useful to put in the pot as far as Quinaults are concerned?

Mr. De La Cruz. Senator, the Quinault Indian Nation contracts almost everything that the Bureau would have available for us to contract. The only thing we haven't touched—and it goes back because of the history of the legislation, because of the Daws Act—is the management of allotted land because of the airship problems and those type of things—title and records and that part of it.

We've contracted everything else the Bureau has, except the forestry, the land and title records, and realty because of the allotted lands, and they have the Bureau of Indian Affairs Special Officers in Law and Order that service 10 tribes. We very seldom see those people.

The Quinault Nation has contracted everything else that's available, not only from the Bureau but IHS—the things we felt we could take on—and we contract several contracts from the State of Washington in the area of child welfare, foster care and those type of things.

The other thing the Quinault Nation has done—and it wasn't the Secretary of the Interior who got sued for trying to provide an area government over Quinault territory—it was the Quinault Nation that exercises government zoning, citation quotes, tax codes, and we've done that for several years. There's not much of the Bureau left at Quinault.

The reason that I talked to my council about going into a demonstration project was that if self-determination means what it is, there are levels or percentage of money that are not coming to the Quinault Tribe that we are entitled to. When we take on a social service program, it shouldn't be just the dollars that are in that program—we're a multi-agency, I want to clarify that, there are 10 tribes in the agency—it would be Quinault's share whether by population or one-tenth of what was there. There's a percentage of administration that's related to that contract personnel in the area and the central office.

As I said in one of these statements, nobody's ever been able to define that. There's been a lot of task forces on that. That's one area that from a tribal perspective needs to be looked at.

As far as education goes, other than higher education and Johnson-O'Malley, the Bureau has never provided education to the Quinault people. The education at Quinault has been a State school, a State school at Taholah, and our kids go to high school in the adjacent community off the reservation. We built a new elementary school 4 years ago and we are in the process this spring of construction of a new high school in Taholah. We have run our own schools. The Johnson-O'Malley contracts we take, we work those out with the BIA and the State. We have been contracting that part for years. Other than when Quinault was being investigated for various purposes, we passed our audits under the Single Audit Act. Our budgets are posted for our people, our audits are—everything's public disclosure. The fears people speak about in a way kind of make me angry and upset me. The Quinault people and government are closest to the problem. When something goes wrong in any field or any area, the first place people point their finger at is their leadership. With the layers of bureaucracy we have to deal with, you get tired of telling them, well, we cannot deal with that because we have got this regulation, we have got that regulation.

I think we need to look, and it needs to be researched, at moving toward what I think of as grant-in-aid. I don't like block grant because of U.S. obligation.

Senator EVANS. You have the feeling that if this were to be implemented in a way—you now contract for—I don't know what the

number is, but a whole series of separate contracts with BIA to run this program and that program and another program, which all have to be dealt with separately and audited and followed separately. Do you feel there's a possibility that even with the same amount of money, all of these grants collectively, if you had greater flexibility in their management that a higher percentage of that money would get to the benefit of the tribe?

Mr. DE LA CRUZ. There is no question in my mind. I've been in this process since day one, and we started out and some of the audit problems we had was because we had to keep everything separate—bank accounts, separate everything. I was probably one of the first and foremost people fighting that. We could centralize our accounting system, we can track money without all these separate checking accounts and all that. One thing that would be an advantage in contracting with the Department of the Interior or the bureau money, we contract Fish and Wildlife—is some flexibility. I think we're speaking about in a bill of 25 percent flexibility. No budget is perfect. As you move through the year if one area is falling short, you should be able to adjust to keep a balanced budget.

We don't have that authority. Because of that, when we fall short in areas, it's tribal hard money that has to make up the differences. Tribal hard money is sometimes money that is really hard to come by.

Senator EVANS. Mr. Thomas, this is generally the same area, but what's it like from your perspective?

Mr. THOMAS. First of all, I guess I'm a little saddened if that's the proper word that somebody suspects that we are a threat to education programs. When I saw that in the language, I don't know what to think. Far be it from me that I would have enough control or even Mark and I put together would have enough control to divert the commitment of our people to education.

We historically over time have continuously lobbied not only in the halls of Congress here but in our own space to modify the approaches that our people are using in education. We contract now for higher education as it is, we contract for Johnson-O'Malley and we have the villages set up their own parent committees—and they generally do a good job. They do a better job in some of the educational policy directions than some of the people who have been around for a long time.

I think that when we talk about education, if you went and looked across Indian country at the leadership, much of the leadership has evolved through an education process, and there's a strong commitment—I've noticed in most Indian tribal groups that I've been associated with—to education. When I'm meeting at a hearing—and I served on a national advisory council on Indian education for a number of years—and I see these same people who are here advocating on behalf of educational programs, I was a little bit—I don't want to use the word insulted—but sad that we had that kind of restriction put upon us because we're perceived as being a threat to the system that we have endorsed over time.

I think that from our point of view we not only run these programs but we set up subsequent scholarship programs by working with other organizations and the Alaska Heritage Foundation, we have the Alaska Native Brotherhood set up a scholarship program

to supplement the moneys, because there is not enough BIA money for education programs. We as a tribe contribute about $250,000 per year of our money that we earn by doing other things to educational programs. We need more money.

I'll be here to say it whenever there's another Appropriations hearing. We need to increase the educational capacities of our tribal people because there is the need there yet, and there will continue to be the need.

Senator EVANS. I'll tell you one thing you don't need is somebody at the central office someplace giving you directions on just how you use all that education money when you put in some of your own and in effect are really creating an education fund.

Mr. THOMAS. Right. Back in the late 1970s, we put more money into Johnson-O'Malley, by the way, and then it got removed from our band analysis. We put more money into housing and it got removed from our band analysis. I feel very strongly that if we're going to ever address the problem of the hidden money that the BIA has, we've got to put the whole thing into a band analysis or some other mechanism that we would call some other tribal input vehicle, but we can't allow just a small part to be under the scrutiny of the tribe. The whole BIA budget needs to be put back in the scrutiny of the tribe. Not that they have to agree with everything the tribe says, but the whole thing's got to be looked at.

Mr. DE LA CRUZ. Mr. Chairman, I'd like to respond to that on education. Head Start, since its inception, has funded direct dollars to tribes, and I don't believe—I know my tribe—that there is a tribal council, tribal government or country that didn't out of its own dollars make up the difference for administrative fees and indirect costs.

On higher education, normally my tribe has to match or double what little money is left from the bureau. As Ed was, I felt very slighted that in our fragmentation some interest groups have forgot why they're there. It was tribal resolutions and tribal governments that sponsored where they are. I think people shouldn't forget that.

Senator EVANS. Mr. Lunderman, do you have a comment along the same line of opportunities that this might give you?

Mr. LUNDERMAN. Well, we have a Saint Francis Indian School that has a charter issued by the tribal council, but they're on their own, they have a Public Law 93-638 contract. We have a local Indian education board that was issued a charter and they deal with JOM moneys and also Head Start now, because Head Start—because of the indirect cost problem—we put in $100,000 a year. A mistake was made back in 1983 on a couple words in a sentence and the inspector general's office won't relent, so we're putting them with local Indians. But all the safeguards are built in. I couldn't unilaterally by myself wipe anything out because I have on my staff a board member from the college, and on our tribal council we have members from the chairman of the college and members from the St. Francis Indian School board. We also have on my staff a member that sits on the Cobb County School Board. Now, there's no way in heck that we would destroy anything. In fact, we're very accountable in this process.

Senator EVANS. I would wager there's not an Indian nation in the country that doesn't spend more on education than comes through the various Federal agencies.

Mr. THOMAS. I might add that I advocate so strongly for education that they started calling me "Indian Ed." [Laughter.]

Mr. LUNDERMAN. I'd like to get back to a problem that we've seen. What we would like at Rosebud—each tribe is different, we all have different treaties, but we're all survivors, so we commend each other and we help each other. As you notice, I don't have any consultants here talking on my behalf. They're too expensive. I mean, $1 million does not go very far.

Well, in Rosebud what I would like to see still in place is probates. Acquisitions, disposition, tribal enrollment, and a superintendent or a captain of the Army or an Indian agent. That's what I would like to see. Now, we can't proceed with this—what we're doing now—but I'm sure we will, because we're all going to support section 301.

What I would like to see if this really doesn't happen, though, is I would like us to go back under the Department of Defense because they got all the bucks. We would develop economically and get well educated with all that money. That's what I would like to see for myself.

I took some notes down here but again I think Ed mentioned this. Should other things happen, then they should put more money into demonstration projects. The time since December 22 when the budget was signed—I think the Bureau has to make a report April 1, and of course everything is dealing with the Bureau in the statute—that's why we were asking for 2 years. We're halfway into 1988 now, and it's not realistic to get this process complete. I don't think anyone can. But we're going to sure do our best. We are asking for 2 years.

In our budget, in our proposal that we submitted, we put $8,000 for attorneys. The other thing that we need to consider is the people of the Rosebud Sioux Tribe—the 16,000 members—are going to have the opportunity when we're finished with this planning and study to decide whether we go forward or go back or stand still. They're going to have that opportunity. No one's going to be left out; they're going to be well-informed. That was one of the first things that came up when I accepted the challenge and went back. They said, "Who authorized you to do that?" I said, "The Constitution Bylaws and the Treaty of 1851." It's been 137 years. So they agreed, yeah. We've all been crying for direct funding for years.

I said this before and I'll say it again: I'm not related to anyone in the Bureau system. That's the problem. A lot of these tribes have relations in the system, all the way up here to DC. It's hard to face that.

So thank you again for listening to me.

Senator EVANS. Thank you very much.

The CHAIRMAN. We should close this phase of the consideration of this measure. I would like to once again point out that if you wish to testify—oh, I am sorry.

STATEMENT OF MARK JACOBS, JR., SECOND VICE PRESIDENT, CENTRAL COUNCIL, TLINGIT-HAIDA INDIANS, JUNEAU, AK

Mr. JACOBS. Thank you, Mr. Chairman. My name is Mark Jacobs Jr., second vice president of the Central Council, Tlingit-Haida Indians of Alaska. I've held various elected offices and positions in Indian leadership for many years.

The remarks I'm going to make don't necessarily relate to other IRA councils, but I'm speaking specifically of what we have experienced in our southeastern Alaskan area.

In the past years I have seen some very important legislation enacted into law. I have noticed those laws diminish from its original intent, mostly by interpretation, restrictive bureaucratic regulations, or a lack of implementation. A good example is Public Law 93-638. When this act became law, the BIA sent out circulars to our Indian organizations inviting them to seek recognition as the tribal government for their locality. That same letter implied that our IRA councils would not be considered as tribal governments because of the millions of dollars they owed to the Federal Government.

These failures in economic loans were caused by lack of self-determination in southeast Alaska, by the BIA through its so-called trust responsibility in its management of the fishing industry loans. The same letter inviting our Indian organizations to seek designation as tribal governments was followed by another letter stating that the IRA council group was to be the tribal government. A hasty process was started to reactivate the defunct IRA's. This action by the Bureau is an indication that they saw the handwriting on the wall, so to speak.

I am sure that this was a bureaucratic maneuver to have a tribal government that would be controlled by the bureaucratic authority vested in the Bureau of Indian Affairs. At present they are kept submissive to the bureau by keeping their contracts and budgeting to a bare minimum.

The BIA has in the past questioned the tribal status of the Central Council of Tlingit-Haida Indians and voiced reluctance to extend that status of recognition. One of the accusations was that Tlingit-Haida served only their tribal members. They contended that our IRA's would be admitting all native Americans. When Mr. Forest Girard was appointed as Assistant Secretary of the Interior for Indian Affairs, he finally extended recognition to us as a tribal government for Southeastern Alaska.

I mention this brief history to point out the situation as I see it. It is the bureaucracy's concern to continue the existence of paternalism. I believe the proposed S. 1703 must become law, along with its changes. I also believe tribal self-government research demonstration projects should be established as proposed in section 301, amendment No. 1399. This will help us to gain better control of our Federal programs and better serve our members.

I can only envision such successful tribal contracting and elimination of costly duplication on several bureaucratic levels. I fully agree with Mr. Edward Thomas of the Central Council in his testimony before this committee hearing on section 301 amendment.

This matter was discussed in our last Tlingit-Haida Executive Committee meeting held in our Juneau office.

Thank you again, Mr. Chairman. I will be looking forward to favorable action by your committee.

[Prepared statement of Mr. Jacobs appears in appendix.]

The CHAIRMAN. Mr. Vice President, I thank you for your statement, and we welcome your presence here.

As we close these hearings today, I would like to once again reiterate that the measure before us was not conceived in Washington. It was drafted in Indian country by Indian people who resolved Indian problems. As the vice chairman of this committee said in the committee report, it is perfectly appropriate that the bill was developed with the active participation of tribal leaders from tribes throughout the country. These are the people who will implement this bill; they are the ones who will rejoice in its strength—and they are also the ones who will struggle with its weaknesses.

We have no way of knowing what the outcome will be. It may be a great success, or it may fail. But as the vice chairman indicated, why not try? If we maintain the status quo and insist upon it, that is where we will be: right here. I think it is about time that we took bold steps and in taking these steps we may fall. But that is the way we learn.

I am confident that it will succeed. It is the product of many minds and many months. And we, both of us, Senator Evans and I, will assure you that everything will be done to expedite a successful consideration and passage. With that, I thank all of you for participating in today's hearing, and the committee will stand adjourned.

[Whereupon, at 5:30 p.m., the select committee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The Indian Self-Determination Act Amendments of 1987 represent a profound and thorough reexamination of one of the most important and successful pieces of legislation affecting Indian people in our Nation's history. Consequently, it is perfectly appropriate that the bill was developed with the active participation of tribal leaders from tribes throughout the country. These are the people who will implement this bill. They are the ones who will rejoice in its strengths. They are also the ones who will struggle with its weaknesses.

I know that tribal leaders generally are pleased with our effort. I am grateful to them for their efforts and for their confidence. I am also aware that many are concerned about a provision in the bill to allow, on a test basis, for tribes to consolidate funding they receive from the Bureau of Indian Affairs and to fashion programs these tribes believe are best suited for their members.

The essence of self-determination is that Indian tribes, as local governments, are in the best position to determine the needs of their constituents. Consolidated funding may represent the logical culmination of this policy. Indian tribal leaders should discuss consolidated funding thoroughly. If they determine that this process will not serve their needs any better than more conventional self-determination contracts or direct program services from the Bureau of Indian Affairs, they should not request a consolidated funding contract. Those who answer in the affirmative, however, should be given the opportunity to try. Their belief may be wrong. If so, the Act allows them to retrocede a consolidated funding contract as they can any other contract entered into under this Act. In any event, authority for consolidated contract funding expires three years after its enactment.

I look forward to working with tribal leaders and members of the Committee to develop improvements to this provision. Specifically, I believe consolidated contract funding should, if desired by a tribe, include the amount of funding provided for the benefit of such tribe and its members through programs operated directly by the Bureau of Indian Affairs. Furthermore, since some tribal leaders are concerned that they might be coerced into requesting a consolidated funding contract, the amendment should include by name only those tribes who believe they can negotiate a satisfactory agreement with the Secretary of the Interior. I believe the Committee also should consider specifying declination criteria similar to those contained in section 102 of the Self-Determination Act. Finally, I remain unconvinced that a limitation on the Secretary's obligation to provide services is any more necessary here than it is for other self-determination contracts.

These are just examples of changes that the Committee should consider before final passage of this Act. I urge those who are con-

cerned about this provision to work with the Committee to improve it. If it is not included in this bill, the consolidated funding concept is unlikely to be tested. The result will be that Indian tribes expressing a desire to fashion their own programs will not be allowed to do so. It will not be because they chose not to or because they failed in their efforts. Rather, it will be because they were never given an opportunity to try.

For many tribes, the Indian Self-Determination Act is of limited value. Some tribes are too small to administer their own programs. These tribes receive services from the Bureau of Indian Affairs through multi-tribe agencies. Two of these agencies, the Puget Sound Agency and the Olympic Peninsula Agency, are located in my home state of Washington.

Two tribes in western Washington, the Lummi Tribe and the Quinault Nation, are large enough and sophisticated enough to assume the administration of federal program which benefit their members. Yet services provided to them are shared with other smaller tribes in their respective agencies. Nevertheless, I believe they should be allowed to use federal money provided for the benefit of their members to fashion programs they determine are best suited for their needs. I am aware that, if they chose to do so, institutional adjustments will be needed to offset any negative impacts their decision may have on other tribes within the agencies that serve them. In any event, I remain committed to working with these tribes, and with their neighbors, to develop better ways for them to provide services to the Indian people they serve.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY OF THE INTERIOR (INDIAN AFFAIRS), DEPARTMENT OF THE INTERIOR, BEFORE THE FEBRUARY 18, 1988 HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON AMENDMENT NO. 1399 PROVIDING A SUBSTITUTE SECTION 209 TO S. 1703, THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS OF 1987.

Mr. Chairman and members of the Committee, I am pleased to testify today on what I believe is an essential element in Federal Indian policy, that is the treatment of tribal governments as real governments with certain residual sovereign authority. I believe that we must go beyond the Indian Self-Determination Act process which is essentially a complex authority for tribal organizations to operate programs or activities otherwise operated by the Bureau of Indian Affairs. Tribal governments with demonstrated ability should be able to assume responsibility for designing and operating programs that meet tribal needs and goals.

Before beginning, I should note that my comments speak only to Amendment 1399 and not to S. 1703 as a whole. The Administration's position on the bill as a whole will be communicated separately.

I raised the need for a new legislative mechanism at your October 2, 1987, hearing on S. 1703 and I appreciate the Committee's efforts to provide for interested tribes to experiment with new methods of using BIA funds to meet tribally determined needs and goals. Very frankly I am somewhat disappointed that the proposed amendment we are discussing today does not go farther. While I believe many tribal governments generally could do at least as good a job (and most likely a more effective job) for their members than can the BIA or the Federally designed programs

available through the BIA, I am aware of the reluctance of some to shifting significant authority and responsibility to tribal governments. Therefore I can accept legislation authorizing demonstration projects while the tribes, the Congress, and the Administration experiment and work out the details of a permanent authorization. Such a demonstration authorization should allow different tribes to try different approaches.

The amendment that the Committee is considering today authorizes a five year demonstration project. Subsections (c), (d), (e) and (f) of the amendment include basic elements for making such a demonstration authorization successful. However, we have concerns and some thoughts about possible improvements to both these and some of the other provisions.

It should be clear that a tribal government and not the Federal Government is responsible to the tribe and its members for those things the tribe assumes responsibility for during a given period of time. For example, if a tribe were to assume full responsibility for its timber program it should not be able to sue the United States for damages for excessive cutting by the tribal government which results in the sale of timber by the tribe at less than prices that could hav been obtained by a later cut of some of the timber. On the other hand the assumption of that responsibility by the tribal government would not mean an end to or a decrease in any other aspects of the Federal Government's responsibilities to the tribe and its members. The amendment under consideration by the Committee should be modified to make this clear. As a model we have attached for your consideration and information a relevant

portion of proposed appropriation language that has been included in the President's FY 1989 budget.

It should also be clear that the transfer of BIA funds to a tribe will mean that the BIA will not have the staff that those funds would otherwise provide. In addition, the transfer of significant amounts of BIA funds to tribes will necessarily lead to the consolidation of BIA agency and area offices in order to effectively use the remaining funds to carry out the remaining BIA functions.

We note that the summary description of the demonstration in subsection (a) does not include a reference to the actual undertaking of the demonstration. The provision could be omitted as unnecessary or it should be made more complete.

We oppose subsection (b) of the amendment which calls for unnecessary two-year planning grants. In addition, we are concerned that this subsection may propose a legislative rewrite of what will be already executed grant agreements. As the Committee is aware, in the Continuing Resolution enacted on December 22, 1987, the Congress provided $1,000,000 for planning by the ten tribes specified in the amendment with a time schedule leading to implementation of the demonstration on October 1, 1988. (A copy of the pertinent Conference Report language is attached to this statement for your reference.) By the time S. 1703 could become law we will have made the grants and tribes should be far down the road to developing their proposals for their demonstration projects to be carried out in FY 1989. This is an adequate planning period and a longer period would be a waste of time, and a waste of money if subsection (b) intends that there

be additional planning money. It should be noted that we have had expressions of interest on behalf of some tribes who want to explore the possibility of a demonstration without us providing them with planning money.

Similarly, we have serious concerns regarding the provisions in subsection (b) (3) and (4) relating to development of information needed to identify the BIA funds and functions to be turned over to the tribes. First, they are not timely because of the pace at which the planning funded by the current $1,000,000 appropriation will proceed on the schedule set out by the Conferees on the Continuing Resolution. We will be providing the tribes with the needed information so that they can develop their proposals within the time frame specified by the Conferees. Second, under subsection (b) (3), the Secretary is directed to compile and analyze all financial and program data for all direct and indirect program accounts associated with providing services to tribes participating in the demonstration program. The bill language refers to "indirect program accounts" which is unclear and not defined. We strongly recommend a clear definition of this term or its deletion. We do not oppose providing an analysis of the direct costs.

Subsections (c), (d), (e), and (f) of the amendment include desirable provisions that:

1. The programs or portions that a tribe can take over responsibility and funding for in a demonstration are those which the tribe could contract for under the Indian Self-Determination Act - P.L. 93-638. The tribe would be entitled to an additional amount equal to the BIA agency,

area, and central office funds for the programs or portions attributable to and taken over by the tribe. However, we suggest that the language limiting the project to "638" type funds is not desirable and we see no reason not to extend the authorization to all BIA funding especially since we are only authorizing demonstration projects at this time.

2. Confirm that an agreement and a demonstration project shall not abrogate or reduce "the trust responsibility of the United States to Indian tribes." I previously commented on the need to make it clear that the tribes and not the Federal Government should be responsible for what the tribes do while carrying out the responsibilities they choose to assume. Subject to this caveat, it is important for all to understand that we recognize the intrinsic nature of this fiduciary relationship to Indian tribes as it was discussed by Chief Justice Marshall in his decision in Worcester v. Georgia. However, we believe that the provision of services to Indian citizens on reservations and determining the most effective way of improving the quality of life on reservations is a shared responsibility between the United States and the individual tribes.

3. The demonstration project agreements are to specify the functions and responsibilities of the tribes and the Secretary and the extent of the tribes' authority "to reallocate funds or modify budget allocations within any project year".

4. Provide for retrocession by a tribe to the Secretary of a program or activity within a year of notice by the tribe.

It should be noted that there have been very few retrocessions under P.L. 93-638 and we prefer and would hope that there would not be any retrocessions under the demonstration projects. Since a tribe is not bound to use the funds in the same manner that the BIA had used them, it should be understood that the BIA would reassume funding for the activity retroceded and provide the service with those funds in a manner consistent with the BIA's provision of the same kind of services to other tribes. We also suggest that an additional alternative be authorized under which the tribe and the BIA could negotiate an agreement under which the tribe could use part of its funding allocation to buy specific services from the BIA.

5. A tribe undertaking a demonstration project may not also require the Secretary to contract with the tribe under the Indian Self-Determination Act for the same programs or portions.

6. Semi-annual reports are to be made to the Congress on the relative costs and benefits of the demonstration project based on base line measurements jointly developed by the Secretary and the tribes.

7. A demonstration project is not to reduce the "services, contract or funds" that another tribe is otherwise entitled to receive.

Subsections (c) and (d) would limit the demonstration to ten named tribes. We believe that the option of a demonstration effort should be open to other tribes as well. Indeed, besides

being fair to other tribes, it should be kept in mind that all ten named tribes may not actually undertake a demonstration project in FY 1989. Participation is and should be voluntary for both parties. Moreover, as the demonstration project proceeds, its value as a test for the self-governance concept will depend in large measure on giving many different types of tribes the opportunity to participate. If the demonstration involves only a handful of participants which share many similarities, it will not tell us whether the concept can succeed for the widely differing tribal situations the BIA serves nationwide.

Because of the voluntary and demonstration nature of the project, it is premature and inappropriate to direct the Secretary to negotiate and enter into contracts with each tribe as provided in subsection (c). Indeed, the ability of the Secretary not to go forward with a specific demonstration proposal should provide some reassurance to those who are concerned with the possibility of dire consequences of tribal governments being allowed to use Federal funds as they deem best. The permanent authority that we hope will result from the demonstration projects could (like the section 102 of the Indian Self-Determination Act does now) restrict the Secretary's discretion in decisions relating to the funding of tribal proposals. However, for demonstration purposes we believe that the best chance for success is to keep the projects completely voluntary on the part of both the tribe and the Secretary. Our goal is to make possible arrangements that all parties support because all perceive them as an improvement over the status quo.

In line with the last paragraph, the binding arbitration provision in subsection (d)(4) is not appropriate for a

demonstration project. In addition, we understand that the Department of Justice has recently raised serious constitutional concerns about subjecting the Federal Government to binding arbitration.

We also note that the automatic waiver of Federal laws and regulations in subsection (d)(3) may be broader than intended and is unintentionally broader than is necessary or desirable. At a minimum it should be made clear that criminal laws are not waived. Moreover, there are many generally applicable requirements imposed on Federal aid recipients under current law, some of which the Committee may wish to preserve. For example, it may waive the Indian Civil Rights Act and Title IX of the Education Amendments of 1972, as amended, which prohibits recipients of Federal assistance for any education activity from discriminating on the basis of sex. As currently drafted the waiver might permit a tribe to use BIA funds to operate a scholarship program that favors male students. We hope to discuss this issue in more depth with the Committee's staff.

Finally, in line with providing the tribal governments with increased risk and responsibility appropriate for governments, the Committee needs to consider authorization (now or during the course of the demonstration) for tribes to waive their sovereign immunity to suit by their tribal members in connection with the tribal governments' carrying out of their demonstration projects. Although tribal governments are eventually accountable to their voting members, there should be a way of protecting or enforcing the rights of minority groups of tribal members or individual tribal members just as the United States and the State

governments provide to their citizens. With out such risks there is little incentive for accountability.

In summary, I believe that the proposed amendment can be modified in line with our views and result in a very good demonstration authorization.

This concludes my prepared statement and I will be pleased to respond to any questions the Committee may have.

EXTRACT FROM BILL LANGUAGE IN THE PRESIDENT'S BUDGET FOR FY 1989

"Provided further, That all funds otherwise available to the Bureau of Indian Affairs to support projects and activities for the benefit of the Rosebud Sioux Tribe, the Mescalero Apache Tribe, the Mille Lacs Reservation, the Red Lake Tribe, the Confederated Salish and Kootenai Tribes, the Quinault Tribe, the Hoopa Valley Tribe, the Lummi Tribe, the Tlingit and Haida Indians, and the Jamestown Klallam Tribe may be used to support voluntary intergovernmental agreements with such tribes to carry out programs and activities designed to meet tribally-determined needs so long as such activities are authorized by law: Provided further, That funds available for trust services to individual Indians on these reservations are available to support such voluntary intergovernmental agreements only to the extent that such agreements provide for the same trust service to be provided to individual Indians by the Tribe: Provided further, That the voluntary agreement shall also include a clear delineation of trust responsibility functions assumed by the tribe and those retained by the U. S. Government: Provided further, That with respect to trust responsibility functions assumed by the tribe, the United States shall not be responsible or liable for any act or omission by the named tribe or their contractors, subcontractors or others acting on behalf of the named tribe in carrying out that agreement, including but not limited to responsibilities for trust functions, contract damages or tort liability:".

Extract from page 889 of the Conference Report on H.J. Res. 395, Making Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988.

$4,000,000 has been restored for self-determination grants. Of this amount, $1,000,000 is to be used by the Bureau for a tribal self-governance demonstration project. The project will allow up to ten tribal governments, which were named in the Department's letter to the House Appropriations Committee dated December 15, 1987, the opportunity to design their own budgets to address tribally determined priorities. The managers direct the Bureau to analyze all budgets and functions at all levels of the Bureau, and to formulate a proposal for the equitable distribution of resources and service responsibilities between these demonstration tribal governments and the remaining tribal governments in multi-tribal agency and area offices. The Bureau should also prepare proposals for reduction or transfer of personnel and consolidation of program functions to accommodate the eventual transition. The $1,000,000 shall be provided under the contracting and granting authority of P.L. 93-638, as a planning grant, to the ten tribes for legal and budgetary research, internal tribal government planning and organizational preparation, and the negotiation process. Each of the tribes shall document obstacles and proposed remedies identified with this planning process, to be consolidated into a comprehensive report to be submitted to the Appropriations Committees by September 1, 1988. As fiscal year 1988 will be the planning phase for the self-governnance demonstration project, normal P.L. 93-638 programs and budgeting should be separate from the planning process. The negotiated agreements should also include a clear delineation of trust responsibility protections assumed by the tribes and retained by the United States government. To document tribal progress under self-governance, mutually-determined baseline measures are to be incorporated into each demonstration agreement between the Federal government and the tribes.

Progress reports on this project shall be submitted by the Bureau by April 1, 1988, and September 1, 1988, documenting any problems experienced in the planning phase and proposed solutions. The managers expect the Bureau to work closely with the tribes involved in the demonstration projects to ensue the success of this initiative, and will closely monitor its progress over the coming year.

STATEMENT OF SENATOR JOHN MELCHER

Mr. Chairman, I would like to thank you for calling this hearing today to consider "Tribal Self Governance Research and Demonstration Project" for 10 Tribes that want to try out block granting of tribal and BIA funds.

As you know, I introduced an amendment yesterday which proposes a different approach to this concept. It is No. 1406, and I appreciate your willingness to have this also amendment considered at today's hearing. My amendment proposes an alternative, because of the numerous recommendations and concerns which have been expressed by Indian tribes and the Indian eduational community about the "block grant" initiative.

During the Committee's consideration of S. 1703, I objected strenously to section 209. On one hand, I think that

concept of block granting of federal should be explored because there may be tribes which could do a bettr job of designing tribal budgets than the BIA, IHS, and Congress have done. On the other hand, there are a whole slew of unanswered questions about the concept. How will trust responsibility be impacted? What will be the role of the BIA for a tribe which implemented block grants? How would the BIA and Congress handle appropriations requests for tribes under a block grant program?

However, since the Select Committee reported the bill in December, the Continuing Resolution for FY 88 included a one million dollar appropriation for a "Tribal Governance Demonstration Project." The Conference Report identified ten tribes which are to receive grants of $100,000 a piece for the purpose of planning tribally determined budgets. I understand that these tribes were selected because they were present at a

hearing held by the House Interior Appropriations Committee when the Assistant Secretary for Indian Affairs announced the "Tribal Governance Demonstration" in concept only. The ten tribes which were at the hearing were willing to enter into a demonstration project, and were subsequently predesignated for funding under the project.

This provision was included in the appropriations bill even though it has not been considered by the authorizing committees. The wheels are being set into motion to forge ahead with a new policy without the benefit of the deliberations of either Congress or the Indian tribes. The "Tribal Governance Demonstration Project" is a complex proposal which I beleive should be in authorizing legislation. That is why I introduced my amendment.

To be fair to the approximately 275 other federally recognized tribes which did not have an opportunity to be at the hearing nor to express an interest in the demonstration project, in establishing the program, Congress should allow all interested tribes to submit proposals to the BIA.

I have some strong objections to the amendment offered on behalf of the ten tribes. It would establish a five-year "Tribal Governance Demonstration Project" for the ten tribes. It would extend the planning grants to two years; authorize implementation of the tribal budgets without further scrutiny by Congress; exempt the tribes from federal program regulations and subject all the funds (including formula education grants and BIA administrative funds) to a block grant budget which each tribe would administer as it sees fit. The amendment would also authorize the tribes to waive any federal statutes or regulations

which do not fit with a tribally-determined budget. That compounds the problem by creating a lot of uncertanties and is a very questionable precedent.

My amendment would: (1) require the BIA to utilize the one million dollar appropriation for competitive grants for which any interested tribe could apply. The ten tribes identified in the Conference Report for the Continuing Resolution would also have to apply for funds, but I assume that they would be in an excellent position to compete; (2) it would establish certain criteria for the grant awards; (3) it would exempt formula educational grants from the block grant planning process, a provision which is an absolute bottom line to the Indian educational community and has been requested by many Indian educational groups; (4) require the tribes to include public participation by their members in the development of proposed

tribal budgets; (5) require Congressional review prior to implementation; and (6) require the BIA to provide a report to Congress and the tribes about the potential impact of block grants on trust responsibility and other pertinent issues.

In short, we simply do not know enough about this proposal to authorize implementation of block grants at this point. I hope the Committee will agree that it is the responsibility of Congress to prudently examine the "Tribal Governance Demonstration Project" before moving forward to implementation of block granting Bureau of Indian Affairs funding for tribes. We should not rush headlong into a concept which has not been fully considered by the substantive committees of Congress nor by the tribes. Under my amendment, the tribal plans would be thoroughly reviewed, and the Department of the Interior's role in the process would be clarified. This is necessary and prudent.

Calendar No. 518

100TH CONGRESS *1st Session*	SENATE	REPORT 100-274

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS OF 1987

DECEMBER 22 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1703]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1703) a bill to amend the Indian Self-Determination and Education Assistance Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

Section 209. Consolidated Contract Funding.—Section 209 of S. 1703 authorizes a demonstration project for consolidated funding for Indian tribes. Authority for consolidated funding contracts would expire three years after enactment of S. 1703. The authority to enter into a consolidated funding contract would only arise at the written request of a tribal governing body. The Committee intends for the arrangement between the Secretary of the Interior and a tribe would be a contractual one, to be embodied in a written agreement negotiated between the Secretary and the tribe requesting consolidated contract funding.

The amount of funding included in the consolidated contract would be at least the amount the tribe received from contracts under Public Law 93–638 with the Bureau of Indian Affairs (for all programs except ISEF). The amount of funding included in a consolidated funding contract would include funds provided for trust services for individual members of a tribe only to the extent that the tribe agreed to maintain trust services for its members.

A consolidated funding contract would be subject to other provisions on the Indian Self-Determination Act. Specifically, the tribe would submit a consolidated funding contract proposal to the Secretary for review. The Secretary then would review the proposal and approve it according to the declination criteria set forth in section 102 of the Act.

Furthermore, any disputes would be resolved by review in the United States District Court or, if claims for money damages and at the election of the tribe, in the U.S. Court of Claims. A tribe receiving funding pursuant to this section would be able to retrocede the contract and resume its eligibility for self-determination contracts pursuant to section 102. Any individual who willfully misapplies, steals, or obtains by fraud any money received by a tribe pursuant to a consolidated funding contract would of course be subject to criminal prosecution pursuant to section 6 of the Self-Determination Act.

Finally, the Committee amendment does not obligate any tribe receiving funding under section 209 to provide the same services and benefits as the Secretary would otherwise have provided. Likewise, the Secretary of the Interior is not obligated under the Committee amendment to provide services or benefits to a tribe or its members to the extent that funding is provided for such services or benefits to the tribe pursuant to section 209 of the Committee amendment. This provision is intended to allow a tribe maximum flexibility to use Federal funds to fashion programs for its members. It is not intended, as section 210 of the Committee amendment and section 111 of the Self-Determination Act make clear, to authorize or require the termination in any way of the existing trust responsibility of the United States with respect to Indian people.

AMENDMENT NO. ---------- Ex. ---------- Calendar No. ----------

Purpose: To establish a tribal self governance planning project.

IN THE SENATE OF THE UNITED STATES— 100th Cong., 2nd Sess.

S. 1703

H.R. ---------- (or Treaty ----------)
SHORT TITLE

(title) Tribal Self Governance Planning Project

( ) Referred to the Committee on ----------
and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Senator Melcher

Viz: Section 209 of S. 1703, as reported, is amended by deleting Section 209 in its entirety and the following new section is substituted in lieu thereof:

TRIBAL SELF GOVERNANCE PLANNING PROJECT

(1) Notwithstanding any other provision of law, the Bureau of Indian Affairs shall administer the $1,000,000 provided for a "Tribal Governance Demonstration Project" in the Continuing Resolution making appropriations for FY 88 according to the following criteria:

(a) The agency shall award competitive grants to tribes which submit applications for the purpose of planning tribal budgets according to tribally determined priorities;

(b) The Secretary shall determine the amount of grant award based upon the budget justification proposed by each tribe;

(c) At least one grant shall be awarded to a tribe in each of the 12 areas of the BIA;

(d) None of the formula education funds for: (1) tribally controlled community colleges under the authority of P.L. 95-471 as amended; (2) BIA funded elementary and secondary schools under the authority of P.L. 95-561; (3) Johnson O'Malley funds shall be included in the consolidated grant planning process.

(e) The Secretary shall only approve legal and consulting fees which are based upon actual billable hours; but in no event shall such fees exceed 10% of the total grant;

(f) In order to be eligible to apply for grants under this section, a tribe must be able to document that it has had no significant audit exceptions for the two fiscal years immediately preceding the application date.

(g) Each tribe which applies for a grant under this section must agree to conduct public hearing within the reservation boundries to provide tribal members the opportunity to recommend and comment on the proposed tribally determined budgets; and further, any objection to the tribal plan registered by a tribal program be noted in the final plan.

(h) Each tribe which applies for a grant under this section shall be required to submit a tribal council resolution approving such application.

(i) A copy of each plan developed by the tribes receiving grants under this section shall be submitted by the BIA to the Select Committee on Indian Affairs and to the House Interior and Insular Affairs Committee.

(2) Within three months of enactment, the Secretary shall provide the following information to Congress and to each tribe that receives a planning grant under this section (1):

(a) all financial and program data, for the two previous fiscal years, including direct and indirect

program accounts, which relate to the provision of services and benefits to each Tribe which receives a grant under this section;

(b) a statement explaining the impact which the consolidated block grant funding will have upon the trust responsibility for tribes which would implement a consolidated block grant budget;

(c) a statement of how consolidated block grant funding would affect the tribe's periodic needs for special assistance from the BIA including, but not limted to the following areas; litigation support, construction, and technical assistance for economic development;

(d) a statement on the methodologies which the BIA is utilizing to determine the direct and indirect program funds and accounts which are related to the provision of services to the Tribes which receive planning grants under this section and how such funds would be transferred to the tribes;

(e) a statement on how the consolidated block grant funding would relate funds for facilities management of federal buildings and staffing patterns at the BIA agency and area offices;

(f) a statement explaining how the budgets for consolidated tribal budgets would be presented to the Congress for appropriations purposes and how this would relate to the appropriations made for categorical programs; and

(g) a statement explaining how federal regulations would be applied to tribally prioritized budgets.

American Indian Higher Education Consortium
333 Pennsylvania Avenue, S.E.
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February 16, 1988

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Saskatchewan Indian Federated College
Saskatchewan Indian Institute of Technologies
Sinte Gleska College
Sisseton Wahpeton Community College
Standing Rock College
Stonechild Community College
Turtle Mountain Community College
United Tribes Technical College

The Honorable John Melcher
Hart Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Senator Melcher:

On behalf of the American Indian Higher Education Consortium (AIHEC), I am happy to hear that you are preparing an amendment to S. 1703 which would make clear that funds received by the tribally controlled community colleges under the authority of P.L. 95-471 as amended, would be exempt from the tribal block grant demonstration projects currently being considered by Congress.

Please understand Senator, that AIHEC does not wish to preclude tribes from participating in a block grant funding approach if this is the wish of tribal governments. We do however, have great concern with the idea that education formula funds received by education institutions such as tribal colleges under separate statute be made a part of such a block grant. The principle of block granting education funds to a governmental entity, be it a tribal government or a state government which detracts from a specific formula allocation developed by federal statute directing federal dollars to schools or students is one that represents a real danger to the education community -- Indian and non-Indian alike.

The language you offer to S. 1703 is a commonsense approach which AIHEC supports totally. Please know we stand ready in anyway to assist you in this endeavor.

Sincerely,

John Forkenbrock
Acting Director
American Indian Higher Education
Consortium

JF:pbk

Association of Contract Tribal Schools

February 16, 1988

The Honorable John Melcher
Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

It has come to my attention that you are preparing an amendment to S. 1703 which would address the issue of tribal block grant demonstration projects. Please know Senator, that the Association of Community Tribal Schools (ACTS), defers to the recognized tribal governments throughout the United States as to whether or not the block grant approach is or is not acceptable. We do however, have a very basic problem with the provision which was initially included in Section 209 of S. 1703 which grants to the Assistant Secretary, BIA, the authority to waive all existing statute and regulations which might conflict with the intent of this legislation.

Your amendment addresses this provision by exempting from this waiver authority those education programs funded under separate statute or under which a specific formula for distribution has been developed under law, i.e. P.L. 95-561. Please know that as the Executive Director of ACTS and representing our total membership, I offer you our support for this amendment as it addresses the waiver provision.

Understand that this is basically a matter of principle and the danger of the possible precedent this could create that our opposition to the existing language is based. Formula funds which have been created in federal statute and which are intended to educate children must be protected. To allow those dollars to be included in a block grant could erase all the work that went into the writing of such public laws as P.L. 95-561, P.L. 95-471 and Johnson - O'Malley. We support your efforts to exempt the education programs from the block grant demonstration legislation and we stand ready to support you in anyway we can.

Sincerely,

Roger Bordeaux

Roger Bordeaux
Executive Director

RB:jf

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western union **Telegram**

SENATOR JOHN MELCHER
CAPITOL ONE DC 20510

HONORABLE MELCHER, THE MONTANA INDIAN EDUCATION ASSOCIATION OPPOSES SENATE BILL 1703 IN ITS CURRENT FORM. WE ARE REQUESTING THE FOLLOWING AMENDMENTS: 1. LANGUAGE BE INCLUDED WHICH WILL EXEMPT THE EDUCATIONAL FORMULA GRANT FROM THE PROPOSED BLOCK GRANT FUNDS, 2. THE ELIGIBILITY PROCESS NEEDS TO BE REOPENED TO INCLUDE ALL INTERESTED TRIBES, 3. WE RECOMMEND THAT U.S. CONGRESS CONSIDER MANDATED PARTICIPATION FROM ALL TRIBAL MEMBERS OF TRIBES RECEIVING BLOCK GRANT FUNDS, 4. WE RECOMMEND PROVISION FOR U.S. CONGRESS TO FULLY REVIEW AND APPROVE THE DEMONSTRATION BLOCK GRANT PROGRAM PRIOR TO BIA OR TRIBAL IMPLEMENTATION. WE WANT THE FEDERAL TRUST RESPONSIBILITY FOR EDUCATION TO BE LEFT INTACT. THANK YOU,

PEGGY NAGEL
BOX 1082
FOX ELDER MT 59521

16:39 EST

MIEA

IPMPOMX WSH

W.U. 524UA (RE-79)

S.I.A. BILLINGS.MT.

Montana - Wyoming
Tribal Chairmans Association

Darryl Brown / Gary Collins, Co-Chairmen
Arapahoe Business Council
P. O. Box 396
Fort Washakie, WY 82514
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FAX 307-4578 (BIA)

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Blackfeet Tribal Business Council
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Chippewa Cree Business Committee
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Confederated Salish & Kootenai Tribes
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Robert Bailey, President
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John Washakie, Chairman
Shoshone Business Council
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FAX 332-4578 (BIA)

Resolution of the Montana-Wyoming Tribal Chairmans' Association regarding S. 1703 and H.R. 1223, the Indian Self-Determination and Education Assistance Act Amendments of 1987.

WHEREAS, the proposed amendments are far reaching in addressing numerous problems experienced by tribes and tribal organizations that have contracted under the Indian Self-Determination and Education Assistance Act of 1974;

WHEREAS, the Montana-Wyoming Tribal Chairmans' Association has reviewed S. 1703 and H.R. 1223 and support strongly the amendments described therein; and,

WHEREAS, the Montana-Wyoming Tribal Chairmans' Association has identified certain concerns arising from their contract experience, which concerns are not addressed in either S. 1703 or the H.R. 1223; and,

WHEREAS, the Montana-Wyoming Tribal Chairmans' Association has reviewed the proposed Senate Amendment No. 1399, an amendment to S.1703 which would create a tribal block grant demonstration project, and have concluded inadequate consideration has been given to the concept of tribal block grants, such as criteria for tribes to participate in the pilot planning programs, how the Federal trust responsibility will be maintained during block grant assistance, and what responsibility the Federal government will have to assist tribes in maintaining appropriations for their block grants awards,

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Montana-Wyoming Tribal Chairmans' Association urges that the term "contract funding base" be defined to mean the greater of the first year contract award, or the highest contract award received prior to the date of enactment of the amendments, to avoid the possibility that in an era of declining Federal appropriations the lowest contract award might be selected for the contract base; and,

2. The Montana-Wyoming Tribal Chairmans' Association urges that tribal contractor salaries be accorded an automatic annual salary increase, to remove the inequity tribal contractors have experienced when Bureau of Indian affairs employees receive automatic salary increases, while tribal employees that perform the same functions pursuant to a Self-Determination Act contract do not receive comparable salary adjustments; and,

3. The Montana-Wyoming Tribal Chairmans' Association urges that the block grant proposal be pursued but be revised to require:

a. That a pool of tribal participants in the planning/demonstration project be selected only after the Bureau Indian Affairs, in consultation with tribes, sets appropriate participant selection criteria; and

b. That the Bureau of Indian Affairs report to Congress with six (6) months of the enactment of the amendments, on the legal questions raised by the block grant proposal; and,

Including how the Federal trust responsibility will be maintained during the period of block grant assistance, and what obligation of the executive branch will exist to assist tribes in maintaining their block grant appropriations.

Gary Collins, Chairman, Northern Arapaho Tribe, and Chairman, Montana-Wyoming Tribal Chairman's Association

JOHN MELCHER
MONTANA

United States Senate

1987 DEC 22 AM 9 21

December 21, 1987

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to inform you of my strong opposition to section 209 of S. 1703, the Indian Self-Determination Act Amendments of 1987. If enacted, section 209 could create serious problems throughout the United States.

I am deeply concerned that section 209 would permit tribal governments to spend general assistance funds from the Bureau of Indian Affairs for purposes other than food, shelter and clothing, and could result in the loss of such vital community services as tribal courts and police protection.

By permitting the Bureau of Indian Affairs to pay millions of dollars to tribes for whatever purpose they see fit, section 209 also would signal congressional abandonment of efforts to hold BIA accountable for large amounts of appropriated funds. It also would undermine the efforts of Indian tribes to strengthen their own financial management practices and their accountability to their own tribal members, BIA and Congress.

Mr. Chairman, I urge you to offer an amendment to delete section 209 when the Senate considers S. 1703.

Best regards,

Sincerely,

John Melcher

730 HART BUILDING WASHINGTON, DC 20510 (202) 224-2644

United States Senate

January 26, 1987

The Honorable John Melcher
U. S. Senator
730 Hart Building
Washington, D.C. 20510

Dear John:

I must apologize for the delay in responding to your December 21, 1987 letter regarding Section 209 of S. 1703, the Indian Self-Determination Act Amendments of 1987.

The Committee has also heard expressions of concern regarding Section 209 from representatives of a broad spectrum of tribal views. Consequently, when the report on S. 1703 is brought up for consideration on the Senate, I am inclined to strike Section 209 from the bill. I understand that Senator Daniel Evans, the primary sponsor of S. 1703, has also concluded that this provision as written may be inconsistent with the Federal policy upon which the Indian Self-Determination Act is based and would support the move to strike.

On Thursday, January 21, 1987, I met with a delegation of 10 tribes who have agreed to participate in a research and demonstration project as an alternative to the block grant funding which was contemplated under Section 209. You may recall that the FY 1988 Interior Appropriations Bill which was included in the Continuing Resolution, contains a provision setting aside $1 million for the purpose of researching the substantive and procedural question involved in a block grant funding for 10 Indian Tribes. Congressman Sidney Yates inserted this provision in response to the testimony from these 10 tribes at an oversight hearing which his Committee conducted on October 21, 1987. As a follow up, representatives of these 10 tribes have met with the Bureau of Indian Affairs to develop their respective research and development programs and they have requested Senator Evans and myself to sponsor an amendment to S. 1703, which would provide specific legislative authority to consolidate their P. L. 93-638 contracts. They anticipate that by the end of FY 1988 they will have developed an experimental contracting process as a result of the research authorized in the Interior Appropriations Act.

The Tribes were concerned that the question of legislative authority for these experimental contracts may be challenged. I agreed to provide them an opportunity to have their proposed amendment considered on their merits, and the Select Committee on

Indian Affairs will hold a hearing in the very near future on this proposed amendment. You may be assured that the Administration will also be asked to comment and that all interested parties will have the opportunity to provide their views to the Committee. If the hearing record supports moving forward with this provision, we can then consider a floor amendment when S. 1703 to be brought up in the Senate.

Thank you for sending your views to me. I look forward to working with you on this important issue.

Sincerely,

DANIEL K. INOUYE
Chairman

AP/mzl

PREPARED STATEMENT OF THE HONORABLE FRANK H. MURKOWSKI
UNITED STATES SENATOR FROM ALASKA

Today the Committee will be considering an amendment to S. 1703 which would create a demonstration program presumably designed to provide tribes and Alaska Native organizations with greater BIA funding flexibility. I am particularly interested in the concept embodied by the amendments before us. We have a serious situation in our native communities in Alaska. On the one hand there is an ever greater need for social welfare assistance programs. On the other, we are faced with a daunting Federal budget deficit which eliminates our ability to provide these services. Anything that can give us more "bang for our buck" so to speak is welcome. I am inclined to think that the block grant program is a way to do hat. However, I do have questions about what effect this amendment will have on BIA funding in the Alaska area and whether there are adequate safeguards to ensure that federal funds are spent appropriately. For example, it is unclear to me who would be responsible for providing Federally mandated services if one of the tribes or the Alaska Native organizations encountered financial difficulties and didn't have the money to provide those services. Would the Federal Government or the state be held accountable? Also, I am hesitant to support an amendment which names 10 organizations to participate. It is my understanding that other tribes and Alaska Native organizations have not been given the opportunity to even apply to participate. I hope today's hearing will clarify some of these concerns.

The Indian Self-Determination and Education Assistance Act has enabled tribes and Alaska Native organizations to deliver services appropriate to local needs and conditions and to strengthen accountability and management. S. 1703, of which I am a cosponsor, is an excellent bill which will further strengthen the policy of Indian self-determination. S. 1703 has strong support of Alaska Native organizations and I believe it should be brought before the full Senate as soon as possible.

Also, I would like to welcome Ed Thomas, the Executive Director of the Tlingit-Haida Central Council to the Committee and I look forward to his testimony.

PREPARED STATEMENT OF LIONEL JOHN, EXECUTIVE DIRECTOR,
UNITED SOUTH AND EASTERN TRIBES

Good afternoon, Mr. Chairman and Members of the Committee. I am Lionel John, Executive Director of the United South and Eastern Tribes (USET).

I am here to give you comments on the Amendments to S. 1703, particularly Section 301, which is proposed to replace Section 209 as originally stated in S. 1703.

First, let me state that upon learning of the original language in Section 209 of S. 1703, the USET organization met on December 15, 1987, and determined that Section 209 should be deleted entirely from S. 1703. This determination was made because of two major concerns. One concern is that Section 209 appeared to be a controversial issue which USET worried, would cause a delay in passing S. 1703. Secondly, USET felt the proposed demonstration project was a spontaneous reaction by the Assistant Secretary for Indian Affairs and in need of better planning. USET, therefore, asked to have Section 209 deleted from S. 1703 to avoid any delays and to provide for additional time in order to carefully consider the merits of this proposed demonstration project.

USET maintains its position insisting on the most expedient passage of S. 1703, without Section 301. USET has several concerns about the new Section 301 and the development of the ten tribal demonstration projects as provided in the Continuing Resolution on Appropriations for FY'88.

USET is not opposed to the ten tribes endeavoring into the proposed demonstration project. However, we feel there are a number of issues to examine. We are concerned that the demonstration project appears to provide that the tribes will take whatever monies that had previously been earmarked for specific programs and will now design a plan to utilize the same monies according to their own priorities. The problem with this is that most of these programs were inadequately funded for their original purposes, thus, forcing the tribes to take "discounted programs" and reshuffling which would seem to widen the gaps for several much needed services for the Indian people. We think that in order for this project to be successful, it must produce results that will bring funding up to commensurate level to provide the full program. Without that, there is no real gain.

One of the foremost concerns we have about this aspect is that this assumption seems to say that the Bureau of Indian Affairs is not functioning in an appropriate manner; and, therefore, we must try something else. If this is the case, there has been a complete absence of any discussion on reducing the bureaucracy, including displacing personnel. We think that if real improvement is to be gained, then the tribes must consider how to replace inadequate Bureau performance.

The FY'88 Appropriation has provided $1,000,000 for ten tribes to commence the project. We disagree that dividing the money in tenths is the appropriate way to conduct a study. This gives no consideration to what the true scope of work will entail and what the project will truly cost. This could place the tribes in greater financial difficulty if they are forced to

subsidize portions of the project. Perhaps a study should be placed in phases with the first phase designed to calculate the appropriations needed to adequately conduct a meaningful project. Additionally, while the Assistant Secretary for Indian Affairs indicates that he lacks the legal authority to just give the monies to the tribes, without programs we feel that he does have the authority to conduct analyses and demonstration projects within the powers of his office. It would seem to us that it would be more appropriate to undertake this study and then analyze the results to best determine what legislative changes might be needed to further enact the outcome of the project.

I wish to express that USET is very disappointed that it was not provided an opportunity to participate in this initial project. We feel that we have much to contribute. If any further consideration can be given to USET, it would be appreciated.

We remain dedicated to the improvement of the Indian communities and to improving the performance of the Federal Government. We wish the ten tribes much success and anxiously await the outcome of their work. Thank you for this opportunity to come before you today.

Respectfully submitted,

Lionel R. John

Lionel R. John
Executive Director
United South and Eastern Tribes, Inc.

STATEMENT OF THE MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA BEFORE THE SENATE SELECT
COMMITTEE ON INDIAN AFFAIRS, FEBRUARY 18, 1988

Mr. Chairman, my name is Billy Cypress and I am Chairman of the Miccosukee Tribe of Indians of Florida. Thank you for the opportunity to present the views of the Tribe on S.1703, a bill to amend the Indian Self-Determination and Education Assistance Act, Public Law 93-638.

The Tribe is a strong supporter of Public Law 93-638 and the self-determination policy. The Tribe contracted with the Bureau of Indian Affairs under the Buy Indian Act before enactment of Public Law 93-638, and we presently contract to provide all BIA services under "638" contracts. We also contract for the provision of health services with the Indian Health Service.

The Tribe strongly supports S.1703, and urges quick passage of the bill by the Senate so that tribal contractors will secure the benefits of the bill as soon as possible. The bill will remedy flaws inherent in the Act itself, and in the administration of the bill by the Bureau of Indian Affairs and the Indian Health Service. Among the bill's provisions which will be most helpful to the Tribe are section 205, which ensures adequate funding of indirect costs, and section 206, which strengthens the appeal rights of tribal contractors by providing that the Contract Disputes Act and the Equal Access to Justice Act apply to tribal contracts.

We strongly agree with statements in the Committee report (Sen. Rept. No. 100-274) that declination hearings are subject to the Administrative Procedure Act (APA), and that the appropriate Secretary may decline to enter into a "638" contract only through the declination procedures. When the Tribe pursued an appeal of the funding level of its fiscal year 1987 law enforcement contract, the BIA refused to provide the Tribe with a recommended decision by the Administrative Law Judge although this right is required by the APA.

These are just a few of the provisions which will benefit the Miccosukee Tribe. The bill contains many other provisions which will strengthen our substantive and procedural rights under the Act. We commend the Committee for its hard work in crafting this important bill. We are especially pleased that the Committee engaged in much tribal consultation on the bill.

We are concerned, however, with the inclusion of what is now section 301, the "Tribal Self-Governance Research and Demonstration Project." Although most of the bill's provisions were the result of much work and tribal consultation by the Committee and its staff, and hearings in the 99th and 100th Congresses, this provision was proposed by the BIA just one day before the first Committee mark-up. The provision is limited to

the ten tribes who have received planning grants for the project in the Continuing Resolution for Fiscal Year 1988. We question what criteria the BIA used to select these ten tribes, and why the Miccosukee Tribe was not consulted about participation. Had the Tribe been consulted, it may have opted to participate.

The Miccosukee Tribe neither opposes nor supports section 301. The Tribe believes that this Title III section be reviewed on its own merit and not be held up by one provision applicable to only ten tribes. S.1703 contains too many important amendments to Public Law 93-638 of benefit to all tribal contractors to be held up longer, and we urge its speedy enactment and delete Title III of this act.

Thank you for the opportunity to present the view of the Miccosukee people on this vital legislation.

SUBMITTED BY: Billy Cypress

PREPARED STATEMENT OF MELVIN SAMPSON, CHAIRMAN
YAKIMA INDIAN NATION

Mr. Chairman, Mr. Vice-Chairman and distinguished Committee Members, my name is Melvin Sampson and I am the Chairman of the Tribal Council of Yakima Indian Nation. Our reservation, the largest in the state, is located in south central Washington on over 1.4 million acres of land. We are signatories to the 1855 Treaty at Walla Walla.

I am pleased to present my views on the recently proposed amendment to S. 1703 establishing a "Tribal Self-Governance Research and Demonstration Project."

I commend the members and staff that have worked on S. 1703 and the newly proposed Section 301 language. I also commend the tribes who have proposed the language now contained in Section 301 on their efforts to help tribes gain control over federally appropriated dollars. However, I also must point out that the majority of Indian Country is not fully aware of this issue and really needs to be. What we are talking about is potentially a radical change in the relationship tribes have with federal agencies and even with the Congress.

The thrust of both S. 1703 and the Section 301 appear to be quite simple - to make Indian Self-Determination a reality and to allow the Indian Self-Determination and Education Assistant Act, P.L. 93-638, to be utilized in the manner that the Congress and tribes had originally intended as opposed to the manner in which it has been implemented.

My feelings on Section 301 are going to sound a bit contradictory but it is the only position I can think of that protects both my people on the Yakima reservation and addresses the larger picture regarding the substance of the proposed amendment.

If the Congress is going to enact section 301 into law as presently drafted, I request that it be amended to include the Yakima Indian Nation. The combination of the deletion of section 209, which should be stricken, and the addition of section 301 as presently drafted would have the effect of statutorily prohibiting the Yakima and other tribes from participating in block grants for the next half decade.

If there is going to be a block grant or a consolidated funding project the Yakima Indian Nation would like to be a part of it, particularly if it will protect the trust relationship existing between tribes and the federal government. When first

proposed by the Assistant Secretary it appeared to be an attempt to reduce or eliminate the government's responsibility toward tribes. I do however think that more thought needs to be put into determining how trust responsibility will be implemented in a block grant. As a treaty tribe we feel very strongly that the federal government has a legal commitment that must not be reduced.

The Yakima Nation participates in P.L. 93-638 and we presently have a large number of Self-Determination Act contracts with the BIA and IHS. As such, we feel that the Yakima's would be ideally suited to be a part of a demonstration project. We are particulary desirous of being included in the two year planning process authorized in section (b). Since P.L. 638 was first implemented, there really has not been a comprehensive planning process to assist tribes in planning for contracting, either regular contracting or the block grant style planning now being proposed. It would be extremely helpful to the Yakima Nation if we could participate in such planning.

While we realize that the $1 million appropriated for the ten specifically identified tribes has been allocated to these ten tribes, and we have no desire to reducing the funds that they will be receiving, we also will be approaching the Congress and the BIA to try and allocate other funds to the YIN to begin a comprehensive planning process in FY `88. We ask the Senate Indian Affairs Committee to amend section (b) to include us. We believe that the planning phases must include an assessment of the needs and resources of the tribes and a determination as to what level of funding would be necessary to adequately meet those needs and manage those resources. There seems to be an orientation now toward dividing up the BIA budget regardless of the adequacy of that budget in establishing the consolidated contracts.

Mr. Chairman, I am not convinced that including 301 is the wisest course to pursue but I defer to the Committee Members in making political judgment calls on how to get S. 1703 enacted into law. I am concerned that we are opening the floodgates to numerous other amendments that have been proposed if we do not simply take S. 1703 to the floor, strip section 209 and pass it in that form.

I do not understand why anything more than the two year planning section should be enacted into law at this time. It seems that what was envisioned by the Appropriations Committees and is contained in subsection (b) of the proposed amendment is basically a study and planning process oriented toward implementing consolidated funding. Why then are we enacting into law an actual block grant itself before the study has even commenced not to mention before we have had the benefit of reviewing the results of the study and plan. I can not imagine that the knowledge that will be gained in the next year or two year will not place us all in the better position to draft and enact the type of language presently envisioned in subsections (c) and (d). What is the rush to enact this language now? Why can't we have time to look at this block grant concept much more carefully than we have so far?

At the oversight hearing in the House that apparently led to the FY '88 planning money being appropriated one of the Indian witnesses said that there were at least 200 questions that have to be asked and answered before implementing block grants. To date I would say that about five questions have been asked and answered and another 50 created. For instance, Section (d)(3) waives all provisions of law and regulations that would conflict with the demonstration project. Do we really want to do that? My tribe just spent thousands of dollars and man hours to get into compliance with the Single Audit Act. Is the intent of this language to waive the applicability of the Single Audit Act and other such accounting provisions? Studies of block grants to date have demonstrated the need for more accountability not less.

One of the other concerns I have with section 301 is how it will effect other tribes. The language in section (f), stating that the block grant project will not effect other tribes is nice but potentially in conflict with section (d). If the consolidated funding mechanism as envisioned in section 301 were fully enacted and the four participating tribes in the Portland Area were to include, for instance, Forestry in their consolidated funding mechanism including their pro-rata share of BIA forestry dollars in both the Central and Area offices, it is difficult to envision that this would not effect non-participating forestry tribes in the Portland Area. The Assistant Secretary has indicated that if enough tribes were to participate to the point where agency and area office budgets were effected he would

consolidate and realign those offices. Clearly this would effect other tribes in the Portland Area.

I also think the Committee should give thought and direction to how contract support funds would be effected by section 301 and to what aspects of a block grant should indirect cost funds be applied. As contract support funds are presently pooled in the BIA, any change in the pool as a result of section 301 would clearly effect all other tribes.

I therefore ask the Committee to consider amending sections (a) and (b) by allowing the Yakima Nation and other interested tribes to participate and deleting sections (c) and (d) at this time. However, if the enactment of even sections (a) and (b) would slow this bill down or hurt its chances of final passage, we would urge that none of the proposed section 301 be included and that section 301 be introduced as a separate bill.

This concludes my comments. As you can see I have mixed feelings. I do not want the Yakima Nation to be perceived as throwing a roadblock in front of an attempt to give control over BIA programs to the tribes themselves yet I am adamant that if such a proposal is to be implemented we don't want to be left standing at the station.

I think this Committee has some political judgments to make, some key calls being whether we have gotten ahead of ourselves, whether the language in subsections (c) and (d) need be enacted now and whether the consolidated funding language can't be introduced as a separate bill? Numerous amendments are now being proposed to S. 1703 that will ultimately delay if not kill this very positive legislation. We can not let this happen. 1703 is too important a bill for all of Indian Country.

Thank you for your time. I will be pleased to answer any questions.

STATEMENT OF
DELIA ANTONE, CHAIRMAN
AK-CHIN INDIAN COMMUNITY
FOR
INTER-TRIBAL COUNCIL OF ARIZONA
REGARDING S.1703
SELECT COMMITTEE ON INDIAN AFFAIRS
February 18, 1988

The Inter-Tribal Council of Arizona, representing nineteen tribes, opposes section 209 of S.1703 as reported. Attached is an ITCA resolution respecting section 209. This resolution was also adopted by the Inter-Tribal Council of Nevada, representing twenty-four tribal groups. Our statement is also submitted on behalf of the Siletz Tribes of Oregon, the Tulalip Tribes of Washington, and the Leech Lake Band of Chippewa and the White Earth Band of Chippewa, both of Minnesota.

We understand the purpose of this hearing is to consider two amendments to S.1703 in the nature of substitutes for section 209. ITCA also opposes amendment numbered 1399, which was introduced by Senator Evans on February 3; and an amendment which was introduced by Senator Melcher on February 17. Of the two amendments, we prefer Senator Melcher's.

We understand the Evans amendment will not be moved unless there is general agreement to support it. We oppose it on several grounds and urge that it not be offered.

First, it is controversial special interest legislation which has no place on a bill of national Indian concern; and it could serve to invite a host of other controversial special interest amendments.

Second, the Evans amendment to this already belated bill will only serve to delay it more. We are informed that the House Interior Committee would almost certainly hold hearings on S.1703 if it passes the Senate with the Evans amendment attached. Further delay could prove costly to tribes if they are forced to wait even longer for the needed reforms provided in S.1703.

Third, it is unneccessary for the ten tribes that advocate the amendment to use S.1703 as a vehicle. The FY1988 Conference Report which accompanies H.J.Res. 395 earmarks $1,000,000 for research and planning grants to those tribes. Thus, unless these funds are rescinded or reprogrammed by Congress, adequate moneys will be available to them. If those tribes require authorizing legislation, we suggest that Senator Evans introduce a separate bill, in order not to cause further gratuitous delays to S.1703.

Fourth, we are deeply concerned about what precedents the Evans amendment could set which might have adverse long-range impacts on Arizona and other tribes. For example, it would grant the Secretary extraordinary discretion to allocate funds to certain Indian tribes or to withhold funds if negotiations fail. And it signals to the public, tribes, and the Executive Branch that Congress now views the Federal commitment to Indian tribes as a matter of

special revenue sharing rather than as a solemn moral obligation to Indian people. We see no public good to be served by circumventing the normal appropriation process or weakening the moral basis of the Federal commitment.

Fifth, the Evans amendment would lend further support to the notion that, in the name of change, it is appropriate for Congress to reduce base funding for those tribes who had banded some of their FY1988 funds under the Indian priority system for Self-Determination grants in order to perform programmatic initiatives and to switch the funds for those tribes to other tribes that had not banded their funds to conduct research and planning, affording them a windfall.

With respect to the Melcher amendment, we are pleased to see that it would not authorize implementation of any initiatives, except as agreed to by Congress. We do, however, oppose the adoption of a Congressional standard which suggests that it may be appropriate to use as much of the research and planning funds for the payment of attorneys fees as may be paid for attorneys fees from judgements against the United States by the Court of Claims. We also are concerned that the Melcher amendment would delay enactment of S.1703 and would lend further support to those funding inequities which are cited in our fifth objection to the Evans amendment. Certainly, however, if the inequities are to remain, it would be far better to share the windfall more widely, as Senator Melcher proposes; but priority for the use of the funds should be granted to those tribes whose base was diminshed by the original earmarking of $1,000,000 for planning and research.

We urge the sponsors of the two amendments not to offer them and, instead, to join simply in moving to strike section 209.

82-814 0 - 88 - 4

19 TRIBES

INTER TRIBAL COUNCIL of ARIZONA

February 10, 1988

MEMBER TRIBES
AK-CHIN COMMUNITY
CAMP VERDE YAVAPAI APACHE INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI TRIBE
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB PAIUTE TRIBE
PAPAGO TRIBE
PASCUA YAQUI TRIBE
QUECHAN TRIBE
SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TONTO APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI PRESCOTT INDIAN TRIBE

The Honorable Daniel Inouye
Chairman, Senate Select Committee
on Indian Affairs
SH-722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye,

The Inter Tribal Council of Arizona, comprised of 19 Indian Tribes, and the Inter Tribal Council of Nevada, comprised of 24 Tribal groups, urge your support of the attached resolution.

The resolution regarding S. 1703, the Indian Self-Determination Act Amendments, requests that the Senate strike Section 209 from the amendments; pass the remainder of the bill without delay, and hold hearings at a later date on Section 209. The membership of the Inter Tribal Councils of Arizona and Nevada are very concerned that the base funding of some tribes may be eroded in order to fund the initiatives of other tribes.

Your continued support of Indian tribal governmental interests is very much appreciated.

Sincerely,

Anthony Drennan, President
Inter Tribal Council
of Arizona
Chairman, Colorado River
Indian Community

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SELF-DETERMINATION ACT AMENDMENTS
Resolution for Joint Meeting
Inter Tribal Council of Arizona and Inter Tribal Council of Nevada
January 1988

WHEREAS, the Senate Select Committee on Indian Affairs has reported out S. 1703 making much needed amendments to the Indian Self-Determination Act after extensive hearings and wholesome and unprecedented participation in the legislative process by Indian Tribes; and

WHEREAS, the bill as reported contains a new last minute Section 209 which represents a radical and dangerous departure from the principles of good government, accountability, and the federal trust responsibility to Indian people, which are safeguarded in other sections of the bill; and

WHEREAS, Section 209 has not been the subject of hearings or consultation with Indian Tribes; and

WHEREAS, the Act making further continuing appropriations for FY 88 earmarks $1 million for planning grants to certain tribes to develop, with the Bureau of Indian Affairs, innovative approaches to funding self-determination;

THEREFORE, BE IT RESOLVED, the Inter Tribal Council of Arizona, and the Inter Tribal Council of Nevada urge the Senate to:

1. strike Section 209,
2. pass the remainder of the bill without delay, and

3. hold hearings at a later date on Section 209, on the results of the aforementioned planning grants to certain tribes, and on the recommendations of other tribes regarding further means of strengthening self-determination, accountability and the trust functions of the federal government;

BE IT FURTHER RESOLVED, the Inter Tribal Council of Arizona, and the Inter Tribal Council of Nevada urge Congress not to erode the base funding of some tribes in order to fund the initiatives of other tribes.

CERTIFICATION

The foregoing was presented and adopted at a duly called meeting of the Inter Tribal Council of Arizona and the Inter Tribal Council of Nevada where a quorum was present and the same was unanimously passed on this 14 th day of January, 1988.

Quinault Indian Nation
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TESTIMONY OF JOSEPH B. DELACRUZ,
CHAIRMAN, QUINAULT INDIAN NATION
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
on Title III, Section 301. "Tribal Self-Governance
Research and Demonstration Project"
amendment to S. 1703

February 18, 1988

I appreciate the opportunity to testify before this Committee in support of Title III, Section 301, "Tribal Self-Governance Research and Demonstration Project" under consideration as an amendment to S. 1703, "Indian Self-Determination Act Amendments of 1987."

I was directly involved with the development of the original P.L. 93-638, "Indian Self-Determination Act of 1975." Over the past decade, the Quinault Indian Nation has contracted extensively under P.L. 93-638 and we are fully aware of this legislation's strengths and weaknesses. I also worked closely with Tribal leadership in the Pacific Northwest and your Committee staff over the last year in the development of the amendments to P.L. 93-638 embodied in S. 1703. I had the opportunity to testify most positively to S. 1703 at the Committee hearing held during the National Congress of American Indians convention in Tampa, Florida.

WE SUPPORT PROMPT PASSAGE OF S. 1703

I state clearly to all concerned that the current legislation in S. 1703 has my full endorsement and support. I fully realize the importance of prompt passage of S. 1703 to Tribal governments across the nation and would not want Title III, Section 301 to jeopardize or slow its passage through Congress.

THERE ARE THOSE WHO OPPOSE CHANGE IN INDIAN COUNTRY

I am very aware there are those involved in American Indian issues who are most opposed to the Tribal Self-Governance Research and Demonstration Project. Obviously many bureaucrats in the Bureau of Indian Affairs will seek to spread rumor and create controversy due to disruptions and change in the predictable career vocations they currently enjoy. Others working on behalf of special interests in Indian Country who operate under the umbrella of Tribal governments and their treaties will attempt to limit Tribal

sovereign powers regarding their special constituency. Those who fear change or simply don't understand Tribal legitimate rights to govern their own affairs with a minimum of Federal intrusion will simply oppose Title III Section 301 based on their own inhibitions or misunderstanding of reality. And many more are simply comfortable with the BIA-Tribal relationship under P.L. 93-638 and S. 1703 who see no need for this evolution in Tribal governance. And finally, there are a few whose personal experiences and limited concepts of reality believe either that Title III Section 301 will create extensive graft and corruption or that these ten tribal governments and their leaders are blindly planning to terminate ourselves as Indian Tribes. This last fringe group, of course, will do everything in their power to save us from our madness.

A BRIEF BACKGROUND LEADING TO TITLE III, SECTION 301

American Indian Tribal governments have long expressed the desire to control their own destinies. Self-government has been the central aspiration since the conclusion of their respective treaties with the United States as independent sovereign nations. Over the last two centuries, the relationship between the United States and Indian Tribes has devolved into one in which the federal bureaucracy dominates nearly all aspects of tribal government. The current Administration proclaims a policy of government-to-government relations with Indian Tribes, but it has continued the practice of Federal control. Our tribal treaties, of course, are with the United States, not the bureaucracy. Within this context we propose Title III.

S. 1703, the "Indian Self-Determination Act Amendments of 1987" is a dramatic improvement over P.L. 93-638 in streamlining the contracting process. The dilemma of Tribal governments locked into multi-Tribe agencies with no further opportunity to contract for needed services were recognized as a problem issue by both the BIA and Committee staff. Unfortunately, neither the BIA or Committee staff working with Tribal representatives could recommend a solution without appropriation authorization increases to meet contracting needs. And so, this issue of multi-Tribe agencies was left unaddressed.

As you know, the Bureau of Indian Affairs has been the subject of negative media attention in recent months, primarily through the Arizona Republic's "Fraud in Indian Country" and the Tulsa Time's "A Vanishing Trust" series. Based on these public allegations of mismanagement, the Senate Select Committee on Indian Affairs established a special Investigations Committee. Chairman Yates of the House Interior Appropriations Subcommittee also held an oversight hearing on problems and solutions to the BIA on October 27, 1987.

Assistant Secretary-Indian Affairs Ross Swimmer proposed at the Yates hearing the establishment of a demonstration project to transfer BIA resources from all levels to a select group of Tribes. These Tribes would assume control of BIA programs and resources, including specific trust responsibility functions. The concept was debated at the hearing and later discussed in more depth with Interior Secretary Hodel and Assistant Secretary Swimmer at the Interior Department on October 28, 1987. Swimmer sent invitations to all Tribes participating in the hearing/ meeting to become involved in a demonstration project. Thus, the ten tribes who responded affirmatively were selected more by fate than design.

The Congress appropriated one million dollars in the FY88 appropriations for these ten Tribes to begin the planning process towards Tribal self-governance. These participating Tribes are to conduct budget and legal research, plan internal reorganization, and prepare for negotiations with the BIA. A central feature to this process is that each participating tribe is recognized as different and that the negotiated agreement between the tribe and the BIA will describe separate and mutual responsibilities.

Assistant Secretary Swimmer also forwarded quite a controversial Section 209, "Consolidated Contract Funding" amendment to S. 1703, the Indian Self-Determination Act Amendments of 1987. This amendment, accepted by the Committee, would have transferred the BIA resources and services to Tribal control, but would have also absolved the BIA of any further trust responsibility obligations or relationships. Obviously, this would be most unacceptable to all Tribes and we proposed this amendment be acceptably altered to protect these ten tribal interests or stripped from the Senate bill. The BIA legislative policy represents a destructive departure from our original understanding of the demonstration Tribe concept. Section 209, in its damaging form, still remains in S. 1703; Title III Section 301 is a most logical replacement.

The Tribal Self-Governance Research and Demonstration project is the next logical phase for Indian Self-Determination. The FY88 appropriations supports funding for a planning phase leading to negotiations. The BIA authorization recommendations in Section 209 certainly raises questions as to the bureaucracy's willingness to carry out even the interim steps necessary for such a complex process. Section 209 would simply leave the BIA in charge of telling tribal governments what resources will be available. In contrast, Title III Section 301 would provide protections for Tribal governments assuming the risks of this historic demonstration effort, offers tribes powers for negotiations including dispute resolution mechanisms, empowers Tribes to manage their own affairs according to their own priorities, and creates the best possible parameters in law to ensure project success.

THE DEMONSTRATION PROJECT AND THE TRUST RESPONSIBILITY ISSUE

As the Committee is aware, a most significant criticism of section 209, as proposed by the Administration, was that in return for allowing tribes to set our own priorities, it purported to provide for a waiver of the trust responsibility that the Federal government has to Indian tribes.

This is a very significant issue for Indian people. Although there may not be complete uniformity of opinion in Indian country on how to best proceed at this point in the process of evolving from the paternalistic system that has plagued the implementation of self-determination to full self-determination, I believe that there is universal agreement in Indian country that full self-determination does not mean terminating the federal trust relationship.

On the other hand, the Indian Service bureaucracy, which if it successfully implements self-determination assures its own demise (or at least reduction) has historically used the specter of terminating the trust responsibility as a device to resist progressive change and maintain pervasive federal control over tribal governments. A blanket threat to absolve the trust responsibility simply promotes the misconception of generic Indians rather than the unique relationship each Tribe has with the United States.

In a sense there are two extreme positions set out: (1) federal control and hence responsibility; or (2) no federal control and hence no federal responsibility. Neither are acceptable alternatives.

The main body of S. 1703 addresses in great detail the lessons of the past decade and focuses on the issue of federal control. The Evans/Inouye Amendment provides for a controlled experiment in which the issue of the trust responsibility can be addressed. Importantly, the Evans/Inouye amendment clearly states that:

> "Nothing in the written agreement, the Demonstration Project authorized under subsection (d), or any other provision of this section shall abrogate or reduce the trust responsibility of the United States to Indian tribes."

In effect, the amendment provides that without abrogating the trust responsibility, the tribes and the executive branch are to negotiate agreements on how particular aspects of their respective responsibilities and obligations will be allocated.

This may be a difficult task. To start with there is no agreement as to what the trust responsibility means. The Final Report of the American Indian Policy Review Commission stated:

> "Indian people are unanimous and consistent in their own view of the trust responsibility. Invariably they perceive the concept to symbolize the honor and good faith, which historically the United States has always professed in its dealing with Indian tribes. Indian people have not drawn sharp legal distinctions between services and custody of physical assets in their understanding of the applications of the trust relationship."

The Executive branch has traditionally advocated a limited view of the trust relationship; management of physical assets. Congress, and a few courts, have related the trust responsibility to the provision of services -- particularly in the health area.. (See, e.g. White v. Califano and McNabb v. Heckler). For the most part, however, litigation has focused on the failure of federal trusteeship with respect to physical assets. (see, e.g. United States v. Mitchell, 463 U.S. 206 (1983))

It is an apparent paradox that the concept of the Federal Trust relationship -- a cornerstone of Federal Indian law -- enunciated by Chief Justice Marshall over one hundred and fifty years ago, and cited with great frequency, remains a somewhat vague and undefined concept. In part this is because the trust relationship conceptually bears some similarity to the "bill of rights." They are both fluid concepts that depends upon the facts and context of each situation.

Because of this inherent situation, the Evans/Inouye Amendment's choice of a demonstration project with a significant preparation period is critically important. Before we sit down to negotiate the required agreements, the tribes will need to review each of the programs, with our technicians and lawyers, and develop the blueprints for this next stage in the Federal - Indian relationship. Hopefully, our process will determine what works, what options are available, the pitfalls, and at the end of the demonstration be able to recommend both permanent legislation and model agreements based on experience.

A DEMONSTRATION PROJECT IS ESSENTIAL FOR MODELING FUTURE LEGISLATION

The Tribal Self-Governance Research and Demonstration Project offers the opportunity to test this next logical step in Indian Self-Determination, document problems experienced in the reality of complex negotiations and Tribal management, and offer evidence based on reality for the fashioning of future legislation. Too

often legislation is created in the vacuum of good intentions and assumed results which, when implemented by law, produce undesired consequences. The proposed self-governance demonstration effort is simply too complex and fraught with too many unknown aspects to be offered for nationwide application by guesswork.

The participating tribal governments have volunteered to assume the risks and burdens required to demonstrate self-governance. The management of programs and funds for our benefit under P.L. 93-638 contract and regulation is a reflection of governance, but more closely associated with Federal performances - type contracts. The capacity to set Tribal priorities, manage Tribally-designed programs to address Tribally-designated needs with the minimum of Federal involvement is the challenge of true self-governance.

The basic issue confronting us today is a cumbersome, unwieldy bureaucracy built layer upon layer over the decades being pressured by frustrated Tribal governments yearning for sovereign independence in the management of their affairs and seeking a larger share of the resources allocated for their benefit. The great Felix Cohen stated it so well many years ago:

> The most basic of all Indian rights, the right of self-government, is the Indian's last defense against administrative oppression, for in a realm where the states are powerless to govern and where the Congress, occupied with more pressing national affairs, cannot govern wisely and well, there remains a large no man's-land in which government can emanate only from officials of the Interior Department or from the Indians themselves. Self-government is thus the Indians' only alternative to rule by a government department. (Handbook of Federal Indian Law, 1942; page 122.)

The right of peoples to govern themselves without external interference is a doctrine first codified in the law of nations in the 18th century. U.S. Supreme Court Justice John Marshall applied this doctrine to the conduct of relations between the United States of America and Indian Nations in the often cited landmark case of Worcester vs. Georgia in 1832. The court declared:

> The Indian nations had always been considered as distinct, independent, political communities ... and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence -- its right of self-government -- by associating with a stronger, and taking its protection. (131 US (6 Pet) 515 (1832) page 560.)

Some suggest that if Indian governments had sums of revenue which they can appropriate through their own institutions for needs defined inside their own nation there will be graft, waste, and resultant Indian government instability. Of course these same people ignore the generations of graft, waste, and resultant Indian government instability cause by the Bureau of Indian Affairs; well documented by the Arizona Republic's "Fraud in Indian Country" series of 10/4-11/87 and the Tulsa Tribune's "A Vanishing Trust" series of 11/9-18/87. As Felix Cohen once observed: "Indians should be permitted to decide for themselves what is right and wrong, and they should be permitted to make their own mistakes. That is the nature of self-government."

The idea of direct aid to Indian Nations by the United States government will make both the policy of self-determination and government-to-government relations meaningful in practical terms. Indian governments and the nations they represent have won acceptance of the principle of self-determiantion, now it is time to put the principle into practice.

**ADDENDUM TO TESTIMONY OF JOE DELACRUZ,
PRESIDENT, QUINAULT INDIAN NATION
BEFORE U.S. SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS HEARING ON TITLE III,
Section 301 Amendment to S. 1703**

February 18, 1988

We are pleased that Senator Melcher's amendment supports a self-governance project, however, a preliminary review of the amendment to S. 1703 indicates that it does not achieve the full range of goals contemplated in Amendment 1399.

An underlying premise of 1399 or what would become Section 301 is that Department of the Interior has had an excess of power in its relationship with tribes. This power has frequently frustrated the effort of tribes to achieve true self-determination. Section 301 sets up a series of mechanisms to shift that power to the tribes for the experimental project. It is not by accident that the tribes for the experiment are preselected; in large part they are preselected to inhibit the BIA's ability to play tribes off against each other and to stack the experiment in a way to insure failure.

Our primary concern with the Melcher amendment is that the Interior Department is permitted broad discretion in how the tribes are selected, how much funding they receive, and, in fact how many tribes participate. Experience has demonstrated that Interior can not be trusted with unlimited discretion. On the other hand, tribes, whose discretion is supposed to be enhanced from the self-determination process find themselves subject to an additional series of restrictions on their discretion: limitations of funding decisions; a requirement of public hearings above and beyond the tribal decision-making process; and an insulation from tribal budgetary decision-making for tribal entities in the education area. We are not taking issue with any of the policy concepts represented in these restrictions--education should be a critical priority, participation of the public in decision-making is positive, and no tribe wants to over pay consultants and/or attorneys. That is not the point, the point is that these should be tribal decisions. For example, in a tribal setting where the General Council (all adult members of the tribe) approves all major decisions, public hearings are duplicative of unique tribal processes. The whole point of self-determination is that tribes who are directly accountable to their people require the power to demonstrate their ability to govern; these provisions restrict that ability.

Although somewhat duplicative of Section 301, the information required under section 2 is valuable. We particularly welcome enhanced Congressional oversight. Such Congressional participation will be crucial to make the full demonstration project contemplated in Section 301 succesful.

STATEMENT OF EDWARD THOMAS, PRESIDENT
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, CENTRAL COUNCIL

BEFORE THE
UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

SECTION 301, AMENDMENT NO. 1399, TO S. 1703 TO AUTHORIZE THE TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT

February 18, 1988

I. OPENING REMARKS.

Good afternoon, Mr. Chairman and members of this Committee. My name is Edward Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska. On behalf of those Tribes, I would like to thank you for providing us with this opportunity to discuss with you here today the importance of Section 301, the proposed amendment No. 1399 to S. 1703.

I also want to take a moment to express my appreciation to you, Mr. Chairman, for your consistently prompt responses to the concerns we tribal chairmen raise. Your role in delegating your productive staff to work with us on this amendment and in scheduling these hearings is exemplary.

II. ALASKA BACKGROUND.

While tales about the wealth of Native Alaskans profligate because of the Alaska Native Claims Settlement Act and North Slope oil discoveries, our people continue to live in harsh economic and social conditions. The unemployment rate among Native Alaskans is

over 68%. Most of those employed earn very little money -- only 18% of our employed earn more than $7,000 annually. The economic boom in some northern parts of Alaska has not really benefited our southeastern Alaska communities, our Tlingit and Haida people's ancestral home. Instead it has simply caused our cost of living to spiral upwards, a fluctuation borne most severely by our members who are on fixed incomes.

III. TLINGIT AND HAIDA CONTRACTING HISTORY AND S. 1703 -- THE "638" AMENDMENTS BILL.

The Central Council first began contracting with the Bureau of Indian Affairs to administer programs twenty years ago under the Buy-Indian Act. When P.L. 93-638 was enacted in 1975, we hoped it would ease our struggle in contracting with a paternalistic, nonresponsive, and hostile Bureau of Indian Affairs bureaucracy. For whatever reasons, things got worse instead of better. The number of Bureau of Indian Affairs area and agency office personnel swelled while our contracts were cut back.

Last year I was part of a group of tribal representatives who worked with this Senate Select Committee's staff members on language that eventually became the underlying bill before the Committee today, S. 1703. I am pleased that S. 1703 will provide long-term solutions to many of the problems Tribes have encountered in contracting with the Bureau of Indian Affairs under P.L. 93-638.

Enactment of S. 1703 is of great importance to us. It contains absolutely critical provisions that will enable us to overcome many

of the serious obstacles to successful "638" contracting. We are anxious to secure enactment of S. 1703 and get on with the equally crucial task of implementing its changes. In this, we will need the industrious and attentive oversight of this Committee, energies I am confident you and your staff are eager to provide. Regardless of the destiny of the topic of this hearing today -- the tribal self-governance research and demonstration project -- S. 1703 must become law and we pledge our continued support to that end.

III. SECTION 301 -- AMENDMENT NO. 1399 -- TO AUTHORIZE THE TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT.

A. PROJECT BACKGROUND.

The tribal self-governance research and demonstration project was born out of discussions some of us tribal leaders had with Congressman Sidney Yates during appropriations hearings in late 1987. Together we explored various means by which the United States could best honor its trust responsibilities and serve the principles of tribal sovereignty. We agreed that tribal self-determination of federal Indian budgeting priorities was central to this purpose. Hence the proposed research and demonstration project with two phases -- first, a planning and exploration stage, and second, an implementation stage. The Appropriations Committees of the House and Senate subsequently provided participating Tribes such as my Central Council with funds for planning and development of this project in the FY 1988 budget.

We are appreciative of the funds appropriated to the ten demonstration Tribes. They will help provide additional means necessary to implement Section 202 of S. 1703 dealing with technical assistance. The funds will help begin a process of minimizing confrontation and encouraging cooperation between Tribes and the Bureau of Indian Affairs.

The Central Council is looking forward to working cooperatively with other demonstration and non-demonstration Tribes, in using these funds to the maximum benefit. In Southeastern Alaska, we are faced with a unique and complex array of legal relationships with the state of Alaska and the United States. We plan to share with other Tribes the information we receive and the analysis we make concerning the Bureau of Indian Afffairs budget and operation during the planning phase. Likewise, we expect to share the legal analysis of our attorneys with other Tribes. Where possible, we will participate in joint technical and legal efforts, sharing expenses with other participating Tribes.

We are particularly anxious to guarantee that the legal and political ramifications of embarking on such a demonstration project are exhaustively examined during the planning phase so that we can make intelligent and wise decisions in negotiating any subsequent demonstration agreement. We cannot and will not sell our birthright. We are unconditionally dedicated to preserving our legal relationship with the United States.

B. WHY WE NEED THE DEMONSTRATION PROJECT.

The Central Council of Tlingit and Haida Indian Tribes is convinced that the tribal self-governance research and demonstration project should be established as generally proposed in Section 301 (Amendment No. 1399). The project will permit us to carefully examine this option as one aspect of our ongoing efforts to regain control from the federal program bureaucrats over precious resources appropriated by Congress and to better address the needs of our tribal members.

1. TRIBAL PRIORITIES WILL GOVERN.

In response to tribal and congressional pressures to make its budget priorities reflect tribal priorities, the Bureau of Indian Affairs has come up with several limp mechanisms over the past two decades that produce results having little relation to tribal needs and realities. Variously called the "band analysis" and the "Indian Priority System," these and other Bureau of Indian Affairs systems were fashioned by the same bureaucrats who were most threatened by true tribal priorities. Although the law provided otherwise, as a practical matter most contracting options were limited to having the Tribe do exactly what the bureaucracy was doing, under the same priorities and activities.

In sharp contrast, the tribal self-governance research and demonstration project promises a uniquely different design in which our Central Council can carefully adjust spending to our Tribes'

priorities. The Central Council would shoulder the responsibility to assess and address our needs after we rank them in terms of their relative importance. No longer would Bureau of Indian Affairs bureaucrats set spending priorities for us. No longer would they administer the programs. No longer would there be a need for multiple levels of bureaucracy consuming critical dollars in short supply. While we will be limited by a total aggregate amount of funds, our tribal priorities will govern what portions of that total sum are spent upon what particular activities. This will help remedy the problem of the Bureau of Indian Affairs putting far too much emphasis on maintaining layers and layers of oversight and not enough emphasis on working together with Tribes in the provision of more and better services to needy tribal members. The tribal self-governance and demonstration project offers a new approach.

While I was working with the Senate Select Committee staff last year on S. 1703, I felt very strongly then, as I do now, that if the Bureau of Indian Affairs is going to have an "Indian Priority System" in the future, it must include <u>all</u> monies appropriated by Congress related to Indians in the figures presented to Tribes for input. As it is now, the bureaucrats show us and permit us to review only a fraction of what Congress appropriates.

<u>2. PROJECT AGREEMENTS COMPARED WITH "638" CONTRACTS</u>.

P.L. 93-638 contracting was initially conceived to be a way to avoid bureaucratic waste and paternalism. However, many of

our efforts to contract have been sabotaged by bureaucrats who are rendered insecure and threatened by successful tribal contracting.

When we set about to negotiate a "638" contract, we generally have to assume the level and type of services that some Bureau of Indian Affairs officials long ago decided were to be provided to us. Although contracting under S. 1703 will undertake to fix many of the contracting problems we have experienced, contracting has never really given us the opportunity to assess and rank our own needs and respond with our own prioritization of available funds.

One example of how Section 301 (Amendment 1399) will improve upon S. 1307 comes to mind out of our practical experience with the Bureau of Indian Affairs Southeastern Agency Office. The Agency Office has staff persons designated to do certain realty work duplicative of that done by Area Office staff persons. Moreover, we contract to do those same functions. But so far we have not been able to remove the duplicative bureaucratic positions and free up those funds to benefit our contracted program. While S. 1703 aggressively addresses a host of other problems, I see nothing in it that will change this bureaucratic retention or diversion of funds in the case of ongoing contracts. Section 301 (Amendment No. 1399) offers us an opportunity to seize those duplicative personnel funds and graft them into the agreement funding.

The tribal self-governance research and demonstration project envisions having a handful of Tribes explore a new inter-governmental

framework for relations between an Indian Tribe and the United States -- one in which a tribal government sets funding priorities as well as administers the funded activities.

3. EFFECTIVELY ABOLISH THE SOUTHEAST ALASKA AGENCY.

Agreements under the tribal self-governance research and demonstration project would have the effect of making it absolutely incontrovertible that several layers of bureaucracy are excess and should be dropped. I am referring specifically here to the entire Bureau of Indian Affairs Southeast Agency Office and to many of the positions and functions now claimed by the Bureau of Indian Affairs Juneau Area Office. Section 301 (Amendment No. 1399) agreements would enable us to avoid the present quagmire that resides in these offices.

In May, 1987, 16 of the 19 tribal governments within the jurisdiction of the Bureau of Indian Affairs Southeast Agency Office asked the Bureau of Indian Affairs to abolish the Agency Office and contract out all of its functions and responsibilities to tribal contractors. One of the leading reasons we made this request was to free up critically needed funds to increase direct services to our members who are facing particularly harsh economic conditions. Most of that Agency's functions are duplicated in the Juneau Area Office located in the same building. In voting to abolish the Agency Office, we were motivated simply by a desire to maximize the delivery of services to our members and not out of any hostility to the Bureau

of Indian Affairs personnel who would be laid off -- six of the nine Agency Office staff members are members of our own Tribes.

In 1985, the Bureau of Indian Affairs Juneau Area Office began developing a reorganization plan that initially anticipated a reduction in staff of 50% with the savings devoted to tribal contracts. However, as that plan was shaped by bureaucratic considerations the savings devolved into an additional cost of $18 million. We have voiced our strong opposition to it. On more than a few occasions in the past, we have seen how funds required for reorganization and relocation are extracted from our program budgets.

C. THE CENTRAL COUNCIL'S EXPERIENCE AND PRESENT CAPABILITIES

1. HISTORY.

The Central Council of Tlingit and Haida Indian Tribes was established in 1935 by an Act of Congress. In 1965, the Central Council was formally recognized by the United States as the official tribal governing body of the Tlingit and Haida people. The Central Council has achieved recognition for administering millions of dollars in programs. In peak years, it operated with annual budgets approximating $10 million, providing a variety of services. Today, through its tribal offices and spin-off affiliates, it serves the educational, employment, human and public service needs of more than 16,000 Native people and other residents of Southeast Alaska.

2. ADMINISTRATIVE CAPACITIES.

The Central Council of Tlingit and Haida Indian Tribes, including its tribal offices and affiliated organizations, now has an annual operating budget of approximately six million dollars. All programs are supported by a Business Management office that utilizes a fund accounting system that has been approved by the Inspector General and conforms to generally accepted principles applicable to government program management. The Business Management office also provides management support services to the various program divisions in the areas of personnel, purchasing, property and supply.

As Central Council President, I have tried hard to make the Central Council's services and programs be responsive to what my people want. Their priorities must be our priorities. Not only must we tribal leaders follow our people's priorities, but we must responsibly manage the dollars or the priorities are rendered meaningless. This is what political accountability means in a democratic government such as our Central Council -- rigorous devotion to the people's priorities and to competent management practices. The tribal self-governance research and demonstration project will strengthen our Central Council governmental structure because it will force accountability on us like never before. This we welcome.

D. WHY WE NEED SECTION 301 (AMENDMENT NO. 1399).

We need Section 301 (Amendment No. 1399) as authorizing language because it will provide a more detailed role for congressional oversight and require bureaucratic compliance with the founding goals of the demonstration project. We already have the planning grant funds. But the accompanying language in the Appropriations Committees' Conference Report does not contain sufficient detail to ensure that the Bureau of Indian Affairs will cooperate with participating Tribes in the planning and research phase. Just as critically, we need Section 301 (Amendment No. 1399) because it sets a clear framework for implementing this project under negotiated agreements. Nothing in the appropriations language deals with the longer-term issues of how this demonstration project is to be implemented. Many critical issues are left unaddressed by the appropriations committees' action. Section 301 (Amendment No. 1399) addresses this vacuum, as authorizing legislation should do, in several important ways I wish to outline below.

1. GUARANTEES THAT TRUST OBLIGATIONS ARE NOT DIMINISHED.

Recently we have heard disturbing statements attributed to members of the Reagan administration expressing disenchantment with or disavowal of the long-standing doctrine of trust responsibility. As a consequence, it is absolutely essential that Congress expressly declare in authorizing the tribal self-governance research and demonstration project that the project shall not in any

way abrogate or diminish the trust relationship Tribes have with the United States. Absent such an effective declaration, the adverse risks to the Central Council far outweigh any potential benefits. Section 301(c) (Amendment No. 1399) of the amendment contains language accomplishing this.

2. GUARANTEES ACCESS TO INFORMATION LEADING TO FAIR AGREEMENT NEGOTIATIONS.

The statutory obligations which will be affected by the tribal self-governance research and demonstration project are many and complex. Before the Central Council of Tlingit and Haida Indian Tribes can fairly execute agreements under the project, we must have access to vital information about the Bureau of Indian Affairs. Before the Central Council executes an agreement, I will insist that we have obtained from the Bureau of Indian Affairs and exhaustively reviewed and analyzed all direct and indirect program accounts, all budgetary and financial data relating to all programs, functions and staff positions of the Bureau of Indian Affairs at all of its bureaucratic levels, including the agency, area and central offices, as to everything having anything whatsoever to do with the Central Council of Tlingit and Haida Indian Tribes and funds, benefits, functions or activities affecting the Central Council, including its tribal offices, affiliated tribal organizations, and its individual members.

We simply have to have such information before we negotiate these agreements. Otherwise we will risk having the Bureau of Indian

Affairs negotiators manipulate and cripple us at the bargaining table. Information is power, and the Bureau of Indian Affairs must be forced by express congressional directive in Section 301 (Amendment No. 1399) to divulge this information. Otherwise, our negotiated agreements will be functionally impaired from the start. If past Bureau of Indian Affairs conduct is prologue to its future conduct, we absolutely are going to need this Committee to proactively engage the Bureau of Indian Affairs in a spirited battle to make it comply with the timeframes and information deadlines contained in Section 301 (Amendment No. 1399).

Section 301(b) (Amendment No. 1399) ensures that the Bureau of Indian Affairs is required to provide us this information within ninety (90) days of enactment of S. 1703. If enactment is delayed, or if the Bureau of Indian Affairs fails to comply with these deadlines, we will be in trouble because of the necessarily tight time schedules required by the Appropriations Committees for reporting to Congress.

3. ASSURES EQUITABLE TREATMENT FOR PARTICIPATING AND NONPARTICIPATING TRIBES.

I have heard that there has been some concern about this demonstration project raised by Tribes in the Lower 48 states who share a multi-tribal Bureau of Indian Affairs agency with tribal self-governance research and demonstration project Tribes. These nonparticipating Tribes and tribal organizations reportedly fear that the project will result in fewer Bureau of Indian Affairs resources

available to them. Section 301(f) (Amendment No. 1399) provides an express guarantee that will avoid this result.

I should also note that we have explained this tribal self-governance research and demonstration project to nonparticipating Tribes in Alaska recently. They expressed support for our initiative and an active interest in watching how it works out for us. All of us, participating and nonparticipating alike, pledged to work closely together with the findings and information so that all can make wise and equitable decisions.

4. FOCUSES EFFORTS ON THE RESEARCH AND DEMONSTRATION NATURE OF THIS PROJECT.

The tribal self-governance research and demonstration project is relatively short-term. Section 301 (Amendment No. 1399) requires studies and reports designed to provide Congress, and participating and non-participating Tribes, with adequate means to evaluate its successes, failures and relative costs and benefits.

5. HELPS KEEP THE BUREAU OF INDIAN AFFAIRS HONEST.

The tribal self-governance research and demonstration project will require considerable interaction between the participating Tribes and the Bureau of Indian Affairs. We will need strong support from the Hill, along with express statutory directives like those contained in the Section 301 (Amendment No. 1399) amendment, to pry loose from the Bureau of Indian Affairs bureaucrats the information necessary to the success of these agreements. This is true no matter how unambiguous and emphatic are the assurances of

cooperation from the Bureau of Indian Affairs Central Office. The information is accessible only through express legislative mandate.

Failure to include Section 301 (Amendment No. 1399) in S. 1703 at this stage would send precisely the wrong kind of message to the Bureau of Indian Affairs. Section 301 (Amendment No. 1399) contains far more detail and guidance over the planning grants than that provided in the Appropriations Committees' Conference Report. The Central Council of Tlingit and Haida Indian Tribes seeks Congressional involvement and oversight. We need your help, and the power of law you can provide through Section 301 (Amendment No. 1399), in dealing with the Bureau of Indian Affairs. Without your active assistance, justified by authorization language that imposes specific timeframes and obligations upon the Bureau of Indian Affairs, the bureaucrats will have more room to sabotage the demonstration project, conceal budget and program information, and generally subvert the intention of self-determination.

IV. CONCLUSION.

I wish to thank the Committee and you, Mr. Chairman, for convening this hearing and introducing Section 301 (Amendment No. 1399). I look forward to working with you and your staff in shaping this monumental tribal self-governance research and demonstration project to ensure that tribal sovereignty and the sacred trust responsibility are enhanced, not diminished.

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STATEMENT OF ALEX LUNDERMAN, PRESIDENT
ROSEBUD SIOUX TRIBE

ACCOMPANIED BY GEORGE SHELHAMER, TRIBAL FINANCE OFFICER

BEFORE THE

U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

SECTION 301, AMENDMENT NO. 1399, TO S. 1703 TO AUTHORIZE THE TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT

February 18, 1988

I. INTRODUCTION.

Good afternoon, Mr. Chairman, members of this Committee. My name is Alex Lunderman. I am the elected President of the Rosebud Sioux Tribe.

On behalf of my Tribe and Tribal Council, I wish to thank you for having me testify here today about Section 301 (Amendment No. 1399), this important amendment to S. 1703. I am accompanied today by my assistant, Mr. George Shelhamer. At the end of this written statement, I am including specific references to the important features of S. 1703 prepared by Mr. Shelhamer.

I am grateful to you, Mr. Chairman, for your quick responsiveness in meeting with several of us tribal chairmen, introducing this Amendment No. 1399 and scheduling these hearings. Your Committee's staff have been most helpful to us in this.

II. S. 1703 -- THE "638" AMENDMENTS BILL.

I want to say just a word at the outset about how important the underlying bill, S. 1703, is to us.

S. 1703 contains absolutely critical changes that will assist us in carrying on our "638" contract programs. S. 1703 is the product of a close partnership between your able Committee staff and tribal government staff around the country. After years of identifying and complaining about contracting problems, we now have a complex bill that should, with energetic and vigilant oversight by this Committee, solve a host of problems.

Enactment of S. 1703 is long overdue, and we continue to pledge our strong and active support for it. Whatever the future fortunes of what we are here today to talk about -- the tribal self-governance research and demonstration project -- S. 1703 must go forward. The provisions of S. 1703 will benefit all of the Tribes in the short and long run, as it removes many of the obstacles that have made effective and successful program contracting nearly impossible.

III. SECTION 301 (AMENDMENT NO. 1399) -- AMENDMENT TO AUTHORIZE A TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT.

A. HISTORY OF PROJECT.

The idea for a tribal self-governance research and demonstration project arose out of a series of discussions some of us tribal Chairman had late in 1987 with Congressman Sidney Yates. He challenged us to propose a way for the United States Government to honor both its trust responsibilities and tribal sovereignty,

including tribal self-determination of federal Indian budgeting priorities. Recognizing the immensity of his challenge and the delicateness of the task, we proposed a research and demonstration project with two phases -- first, a planning and exploration stage, and second, an implementation stage. Congressman Yates and the Appropriations Committees of the House and Senate saw fit to provide participating Tribes with funds for planning and exploration in the FY 1988 budget.

B. WHY THE DEMONSTRATION PROJECT IS ABSOLUTELY NECESSARY.

We believe such a tribal self-governance research and demonstration project must be seriously explored as one way to wrest control of our own lives and aspirations from the hands of the bureaucrats. We do not intend this project to reduce relations with the United States Government, just with its bureaucrats.

1. TRIBAL PRIORITIES CONTROL.

Over the years, the Bureau of Indian Affairs has been pressured by Tribes and Congress to have its budget priorities reflect tribal priorities. The Bureau of Indian Affairs developed a confusing thing it called the "band analysis" which had little if any connection to the actual expressed needs of Tribes. More recently, the Bureau of Indian Affairs has used an Indian Priority System, which it claims adjusts Bureau of Indian Affairs budget decisions because of tribal input. These and other Bureau of Indian Affairs

systems were designed by the very bureaucratic interests which would be most challenged by a true tribal priority system.

The tribal self-governance research and demonstration project will be uniquely designed to permit our Tribe to carefully conform spending to tribal priorities. The responsibility will be on the shoulders of my tribal government to assess and address our needs based upon a ranking of their respective importance. No longer will Bureau of Indian Affairs bureaucrats set spending priorities on our reservation. The only general constraint will be that we will be limited by a total aggregate amount of funds, but as to what portions of that total sum are spent upon what particular activities, our tribal priorities will govern.

2. AGREEMENTS DISTINGUISHED FROM "638" CONTRACTING

Contracting under P.L. 93-638 has often been presented as a way out from under the bureaucratic thumb. However, for reasons you have heard and responded to in S. 1703, many of our efforts to contract have been sabotaged by a bureaucracy whose very existence is threatened by successful tribal contracting.

There is a key difference between the new and improved contracting scheme contemplated in S. 1703 and the tribal self-governance research and demonstration project agreements proposed in Section 301 (Amendment No. 1399). In contracting, we generally have to assume the level and type of services that Bureau of Indian Affairs bureaucrats long ago decided were to be provided to our

tribal members. Although S. 1703 contracting promises to remedy a great number of the contracting ills we've experienced, contracting has never really given us the opportunity to assess and rank our own needs and respond with our own prioritization of available funds.

What sets apart the tribal self-governance research and demonstration project from S. 1703 contracting is that the pilot project envisions a few participating Tribes exploring a new framework for tribal-U.S. government relations -- one in which our tribal government sets the funding priorities as well as manages the administration of the funded activities. Agreements under this demonstration project would reduce the excess layers of bureaucracy that increasingly seem not only useless, but harmful to our interests. I speak specifically of many positions and functions within the Bureau of Indian Affairs Aberdeen Area Office. The agreements will enable us to get around the quicksand of that office and deal directly with the Bureau of Indian Affairs Central Office.

3. ROSEBUD PAST EXPERIENCE AND PRESENT CAPABILITIES

a. Past Problems.

Some years ago, Rosebud officials managed contracts as if the Tribe had the authority to spend as it saw fit. This proved disastrous, as our Tribe learned that P.L. 93-638 was not a self-determination bill so much as it was a contract management program. The contracted dollars were supposed to fund activities identical to those previously delivered in direct services by the

federal bureaucracy. No contract funds were available for new or different activities. So the old bureaucracy-priorities lived on through the contracts. Rosebud officials of a previous generation strayed from these contract requirements, leaving my administration with a burdensome legacy of huge disallowed costs. As a result, we have been forced to make sacrificial efforts to remove this debt even as we have taken aggressive steps to ensure that our contracts are managed as we are obligated to do.

b. Present Management Capabilities.

I am proud to say that our contract and program administration record has been quite clean during the past several years. We have institutionalized careful management systems and internal, strict fiscal controls such that the past problems of unpaid bills, disallowed costs and mis-directed expenditures cannot reoccur.

The Rosebud Tribe currently administers 37 federal programs under contract or grant. These include programs of the BIA, IHS, the United States Department of Labor and the United States Department of Health and Human Services. The federal budget for these 37 programs is approximately $8 million annually. In addition, the Tribe also administers five state programs monies totaling $300,000 annually. To administer these programs and the Tribe's core administration, Rosebud employs 282 staff, 275 of which are Indian.

Recent audits of federal or private programs have found the Tribe's accounting measures to be exemplary. The current system requires that the Tribe prepare a revenue and expense budget based on previous years' experience. This budget is strictly adhered to during the year. It is broken down into specific governmental accounts, as required by each federal program, and computerized. The actual computerized "accounting" system for each program was developed by the Tribe in close consultation with federal agency representatives and the Inspector General's office.

Under the current financial system, all federal program dollars are the direct responsibility of a professional financial officer, with checks signed by the tribal treasurer. Financial reports are submitted to the council monthly. The treasurer is bonded in an amount set by resolution of the council and satisfactory to the various federal agencies. Tribal accounting records are subject to organization-wide audits yearly or at the discretion of any federal agency or the tribal council.

Now that we have our house in order, the tribal self-governance research and demonstration project promises us at Rosebud a chance to do lawfully and structurally what we, as a tribal government, have always wanted to do -- assess our own needs and set service delivery priorities accordingly.

As tribal President, I want my Tribe's services to be responsive to what my people want. Their priorities must be our tribal

government's priorities. Not only must we follow the people's priorities, but we tribal leaders must responsibly manage the dollars or the priorities are meaningless. This is what is at the heart of what accountability means in a democratic government -- strict adherence to the people's priorities and to good management practice. Ours is a government of, by and for our people. Our tribal government is only as good as the quality of its connection to our people. If we don't reflect their priorities, or if we don't manage the money right, they will throw us out and send a clear message what the priorities and management should be. This tribal self-governance research and demonstration project will strengthen tribal government structures because it will force accountability on us like never before.

C. WHY SECTION 301 (AMENDMENT NO. 1399) IS ABSOLUTELY NECESSARY.

1. TO ENSURE THAT TRUST OBLIGATIONS ARE NOT DIMINISHED.

Given the currently raging uncertainties about the Swimmer administration's allegiance to the long-standing doctrine of trust responsibility, it is absolutely vital that Congress make some express declaration in authorizing the tribal self-governance research and demonstration project that the project shall not in any way abrogate or diminish the trust responsibility. Absent such an affirmation, the adverse risks to my Tribe far outweigh any potential benefits. Section 301(c) (Amendment No. 1399) contains language adequate to this task.

2. TO GUARANTEE INFORMATION LEADING TO FAIR AGREEMENT NEGOTIATIONS.

There are myriad and complex statutory obligations which will be affected by the tribal self-governance research and demonstration project. Before Rosebud can fairly execute agreements under the project, we must have access to vital information about the Bureau of Indian Affairs. For example, before Rosebud executes an agreement, I will insist that we have obtained from the Bureau of Indian Affairs and exhaustively reviewed and analyzed all direct and indirect program accounts, all budgetary and financial data relating to all programs, functions and staff positions of the Bureau of Indian Affairs at all of its bureaucratic levels, including the agency, area and central offices, as to everything having anything whatsoever to do with Rosebud or Rosebud-affecting funds, benefits, functions or activities.

We must have such information before we negotiate these agreements or we will run the risk of having the Bureau of Indian Affairs negotiators out-maneuver us at the bargaining table. Information is power, and the Bureau of Indian Affairs must be forced by express congressional directive to divulge this information. Otherwise, our negotiated agreements will be fatally crippled from the start. The playing field must be level if our Tribe is to begin to play. If past Bureau of Indian Affairs conduct is any indication of future conduct, we are going to need your Committee's active

assistance in encouraging the Bureau of Indian Affairs to comply with these deadlines.

Section 301(b) (Amendment No. 1399) should ensure that the Bureau of Indian Affairs is required to provide us this information within ninety (90) days of enactment of S. 1703. Any delays in enactment or in Bureau compliance with these deadlines would cause us grave difficulty in complying with the tight time schedules required by the Appropriations Committee report language. Time is of the essence.

3. TO ASSURE EQUITABLE TREATMENT FOR PARTICIPATING AND NONPARTICIPATING TRIBES.

There has been some understandable concern raised by Tribes who share a multi-tribal Bureau of Indian Affairs agency with tribal self-governance research and demonstration project Tribes. Nonparticipating Tribes and tribal organizations fear that the project will result in fewer Bureau of Indian Affairs resources available to them. Section 301(f) (Amendment No. 1399) provides an express guarantee that will avoid this result.

4. TO FOCUS EFFORTS ON THE RESEARCH AND DEMONSTRATION NATURE OF THIS PROJECT.

The tribal self-governance research and demonstration project is relatively short-term. Section 301 (Amendment No. 1399) requires studies and reports designed to provide Congress, and participating as well as non-participating Tribes, with adequate means to evaluate its successes and failures and its relative costs and benefits.

IV. SPECIFIC FEATURES OF S. 1703 -- THE "638" AMENDMENTS BILL.

George Shelhamer, who is accompanying me and testifying on behalf of the Rosebud Sioux Tribe, came to Rosebud in 1980 as the Federal Monitor, representing all of the federal agencies that were at that time contracting with the Rosebud Sioux Tribe. He served both the Tribe and the federal agencies for three years and later became the Tribe's Finance Officer, a position he has served us in for three and one-half years. As a former Bureau Superintendent, a Federal Monitor and as Tribal Finance Officer he has a special viewpoint from which to talk about the amendments to P.L. 93-638.

On several occasions last summer and fall I sent Mr. Shelhamer to participate with tribal leaders, their staff and the staff of the Senate Select Committee in working group that defined problem areas in P.L. 93-638 contracting and that proposed solutions to these problems. The definition of these problem areas and initial solutions were surprisingly uniform for all regions represented.

The major problems were: 1) the failure of federal agencies to provide full level of funds to cover indirect costs, as prescribed by the Indirect Cost Agreements; 2) yearly repetition of contract applications, annual major negotiations, late approval of contracts because of all of the paper work, the resulting late release of funds to the letter of credit, all giving the whole contracting process an atmosphere of short tenure, rather than something that should be the basis of long term planning; 3) the carry forward of funds from the

initial funding year to the second year has been a maybe process taking place in the fourth or fifth month of the fiscal year or maybe not at all; 4) local Bureau Agency staff make up the strongest anti-tribal government political force on the reservation because of their continual fear that tribal government is going to "take away their jobs"; 5) the process for securing buildings and equipment when a Bureau program was contracted was very complicated and troublesome, surplus equipment from other federal agencies was available only through the Bureau, leaving the Bureau responsible for the disposition of the equipment; 6) all funds appropriated by Congress are to the Bureau, which has its own programs for which it is responsible, leaving Tribes feel that they get only what is left after the Bureau takes what it needs when funds are cut. All of these areas were discussed and the amendments in S. 1703 address these problems.

S. 1703 defines the indirect cost rate as the Office of Management and Budget and the Office of the Inspector General require it to be used by a Tribe. S. 1703 obligates the Bureau and the Indian Health Service to provide for indirect costs in their appropriation requests to Congress.

The bill provides for mature contracts when they are appropriate, it provides for three year contracts in new contracts and an indefinite term in mature contracts. It also provides for reduced reporting requirements for mature contracts and for protected funding on a continuing basis subject to defendable terms. Funds will be

available in the second year of a contract when the reasons for the need to carry forward funds is legitimated.

One of the areas this bill also sensitively addresses is the displacement of Bureau and Indian Health personnel as a result of tribal contracting of federal programs. This should relieve some of the panic that is caused when a rumor arises suggesting that the Tribe might contract a program. The bill also provides for the simplification, at the Secretary's discretion, permitting the use of buildings and the donation of personal property found to be excess to the needs of the Bureau or the Indian Health Service. It also authorizes a means for tribal acquisition of any federal surplus property. The additional reporting requirements and the restrictions on reducing funds set aside for tribal contracting put on the Bureau and the Indian Health Service should make it much easier for Tribes to determine where the money is going.

While we recognized that all of the problem areas could not be resolved to the satisfaction of each of us, we agreed that if we could have these areas resolved to the extent that they are addressed in S. 1703, that Tribes through out the country would benefit greatly.

V. CONCLUSION.

As you know, Mr. Chairman, we at Rosebud especially appreciate your strong and active work on behalf of S. 1703 as a whole. I also wish to thank the Committee and you, Mr. Chairman, for convening this

hearing and introducing Section 301 (Amendment No. 1399). I look forward to working with you and your staff in shaping this monumental tribal self-governance research and demonstration project to ensure that tribal sovereignty and the sacred trust responsibility are enhanced not diminished.

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STATEMENT OF MARK JACOBS, JR. 2ND VICE PRESIDENT
OF THE CENTRAL COUNCIL OF TLINGIT AND HAIDA
INDIAN TRIBES OF ALASKA

BEFORE THE

U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

SECTION 301, AMENDMENT NO. 1399, TO S. 1703 TO AUTHORIZE THE
TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT

FEBRUARY 18, 1988

Thank you, Mr. Chairman and Members of this Committee, for this opportunity to appear before you. My name is Mark Jacobs, Jr., Second Vice President of the Central Council of the Tlingit and Haida Indians of Alaska. I have held various elected offices and positions in Indian leadership for many years.

In the past years I have seen some very important Indian legislation enacted into law. I have noticed those laws diminish from its original intent. Mostly by interpretations, restrictive bureaucratic regulations, or by lack of implementation. A good example is P.L. 93-638. When this Act became Law, the Bureau of Indian Affairs sent out circular letters to our Indian organizations, inviting them to seek recognition as the Tribal Government for their locality. That same letter implied that the IRA Councils would not be consider as the Tribal Governments because of the millions of dollars they owed to the Federal Government. The failure of these economic loans was caused by the complete lack of Self-Determination. In Southeastern Alaska, the Bureau of Indian Affairs, through it's so called "Trust Responsibility" grossly mismanaged the fishing industry loans.

The same letter inviting our Indian organizations to seek designations as Tribal Governments, was followed by another letter, stating that the IRA Councils will be the Tribal Governments. A hasty process was started to reactivate defunct IRA's. This action by the Bureau is an indication that they saw the "hand writing on the wall", so to speak. I am sure it was a bureaucratic maneuver to have Tribal Governments that would be controlled by the bureaucratic authority vested in the Bureau of Indian Affairs. At present they are kept submissive to the Bureau by keeping their contracts and budgeting to a bare minimum.

The Bureau of Indian Affairs, has in the past questioned Tribal status for Central Council of Tlingit and Haida Indians and voiced reluctance to extend that status recognition. Their flimsy excuse was that the Tlingit and Haida's served only their tribal members, they contended that the IRA's would be admitting all Native Americans. When Mr. Forrest Gerard was appointed as Assistant Secretary of the Interior for Indian Affairs, he finally extended recognition to us as the Tribal Government for Southeastern Alaska.

I mentioned this brief history to point out the situation as I see it. It is the Bureaucracy's concern to continue its existence of paternalism

I believe the proposed S. 1703, must become Law along with implementing its changes. I also believe the Tribal Self-Governance Research and Demonstration Project should be established as proposed in Section 301 (Amendment No. 1399) this will help us regain better

control of our Federal Programs and better serve our members.

I can only envision successful tribal contracting and the elimination of costly duplications of the bureaucratic levels.

I fully agree with Mr. Edward Thomas, President of the Central council in his eloquent testimony before this Committee Hearing on Sec. 301 (Amendment No. 1399). This matter was discussed in the last Tlingit and Haida Executive Committee Meeting held in our Juneau, Alaska Office.

I thank you again Mr. Chairman, and I will be looking forward to a favorable action by your Committee.

Respectfully submitted,

Mark Jacobs, Jr.
2nd Vice President
Tlingit and Haida Tribes of Alaska

STATEMENT OF WILFRED K. COLEGROVE, CHAIRMAN,
HOOPA VALLEY BUSINESS COUNCIL

BEFORE THE
UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

REGARDING PROPOSED SECTION 301 TO S. 1703
ESTABLISHING A
TRIBAL SELF GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT

Good afternoon. I am Willie Colegrove, Chairman of the Hoopa Valley Business Council, the governing body of the Hoopa Valley Tribe. I have served as Chairman of the Council since June, 1985. Before assuming the Chairmanship I served two terms as a member of the Council. I appreciate this opportunity to testify in support of proposed amendments to S. 1703 that would establish a demonstration Tribal Self-Governance Project.

The Hoopa Valley Tribe resides on the Hoopa Valley Reservation in Northern California. Our Business Council serves as a general unit of local government for that area; we are, in fact, the third largest government in Humboldt County (after the cities of Eureka and Arcata). The Hoopa Valley Tribe is the only government currently capable of providing essential facilities and services on the Hoopa Valley Reservation.

Our Tribe is served by a BIA field office at Hoopa that deals primarily with forestry management, the BIA Northern California Agency Office in Redding, California, and the BIA Sacramento Area

Office. The Redding office oversees the activities of the BIA dealing with about thirteen tribes in Northern California; it is a multi-tribe agency. This, frankly, sometimes causes difficulty, as the Agency attempts to balance its resources against the perceived needs of all the tribes within its jurisdiction.

Like many other tribes we at Hoopa have not always had easy relations with the BIA. But I do not want to belabor the problems of the past. It is our hope that things are improving. What this committee has already proposed by way of changes to the 638 process should help tremendously. We commend the committee for this work and strongly support S. 1703. We support the Self-Governance Demonstration Project, therefore, not as a criticism of what you have already accomplished. Instead, we come in the spirit of cooperation and in hopes that through these discussions the Committee can put in place one more piece in the growing legal structure that will nurture and sustain Indian self-determination.

Why, you may ask, in the face of the much applauded provisions of S. 1703, do we urge you to take yet another step? We think the Committee has already answered that question in its report on S. 1703. Despite the tremendous value in amending the 638 process, 638 nevertheless leaves with the BIA the primary role of identifying program priorities. Under 638, a tribe can obtain monies to perform BIA functions. But the definition and scope, the priority and emphasis, in those functions are still set very largely by the BIA.

The Committee understood this limitation. At page 26 of your Senate Report No. 100-274, you urged that "[t]he Secretary and the tribes should propose procedures to the Congress to allow tribes to reprogram funds within consolidated contracts to better address tribal priorities." And that, you see, is what that Self-Governance Program is all about. It is a way to shift not only the implementation, but the design of BIA programs to the tribes, who best know the needs of their people and their land.

There are powerful reasons why Congress should act now to enhance Indian tribes' control over the programs meant to serve them. Let me take them one at a time.

First, on the practical level, we believe that with hard work and good faith negotiations, we can use a self-governance program to improve delivery of services on our reservation, eliminate duplication, and better manage reservation resources.

The Hoopa Valley Tribe is in many ways blessed. The natural resources on our Reservation provide a level of tribal income that, although not adequate wholly to run all Reservation programs -- especially those typically funded by the BIA -- nevertheless supports a sizeable portion of the Tribe's own governmental budget. To best utilize that income for our members, we have developed, and I am very proud of, a sophisticated planning and budgetary program. Each summer, the Business Council directs the heads of the tribal departments and entities to submit budget requests and justifications for

the new fiscal year. These requests are analyzed by the tribal fiscal division and painstakingly examined by the members of the Hoopa Valley Business Council acting as a committee as a whole. Once a draft tribal budget is prepared, the Council holds public hearings. The budget is put into final form and submitted ultimately to the Northern California Agency of the Bureau of Indian Affairs. That begins the often lengthy process of review, negotiation, and, ultimately, federal approval of the tribal budget, in some form.

Parallel, but not closely connected to our budget process, is the BIA's budgeting procedure. Candidly, it is often extremely frustrating to attempt to coordinate our processes with those of the BIA. The timing is different. While we are preparing our FY 88 budget, the BIA is seeking input on its FY 89 or FY 90 budget. And we have to prepare our budget often before Congress acts. We are often not sure what we need to fund and what BIA will fund. Priorities also often differ. In fact, priorities at the BIA can change with superintendents, so we may see forestry money shifted to law and order one year and law and order money shifted to housing the next. Our influence on the local BIA budget, moreover, comes primarily through one meeting, where all the thirteen tribes in the Redding Agency consult with the Superintendent. At such meetings, many voices, often with differing views, struggle to be heard all at the same time. All this leads to confusion, duplication, or lack of

coverage in areas vital to government of the Hoopa Valley Reservation.

We think that a Self-Governance Program could improve this situation. With a self-governance grant, there would be one primary budget for the Hoopa Valley Reservation -- the Hoopa Valley Tribe's budget. We would set priorities, we would balance needs against resources, we would avoid duplication yet provide fundamental services. At least, that should be the goal. But we need a demonstration Self-Governance Program to see if we can make it work. I might add, too, all this is most likely to work well if there could be an assured level of grant funding over several years. That way tribes can engage in long-range planning as well as annual budgeting.

The second reason to support these amendments is philosophical. That this reason cannot be quantified in dollars and cents does not make it any less important. In fact, in many ways, it is the central issue of concern to tribes across the country -- and the central driving force behind this Committee's work, as well. I speak, of course, of the Indian right of self-determination.

I do not have to lecture this Committee on the rough course the relationship between the United States government and American Indian tribes has followed. But I cannot emphasize enough, as an American Indian, and as a tribal chairman, that for us the aim has always been the same: self-determination, self-government, self-respect. The central value of the proposed amendments, therefore, is that they

open new doors for tribal action, for tribal independence, for tribal self respect.

Our third reason to support action now relates purely to a question of timing. We think it would not be wise to wait until later, until, for example, we have implemented the amended 638 program, to start a Self-Governance Project. We all agree on our goal: shifting policy choices from the BIA to the Tribes. We all agree that, given the long and checkered history of the BIA-Tribal relationship, it will not be easy to accomplish that goal. It may turn out, even, that further directive legislation will finally be needed to reach our objective. Given all that, what better way is there to uncover both the opportunities and the pitfalls in a self-governance project than to try it? The program contemplated in the amendments to S. 1703 will permit the BIA and the tribes to work through some of the problems and find, we hope, a way to reach our goal. With several tribes involved, we may well get several different approaches, which is exactly what we need. We need that because every tribe is unique and has different governmental priorities. And we need that diversity so we can tell which approaches ultimately work best.

Finally, if I may, I would like to add a word on the question of how the Secretary of the Interior implements his trust responsibility. In both S. 1703 and the amendments we are discussing today, Congress insured that the Secretary of the Interior retains

his trust responsibilities. We support that decision. But, in our experience, the Secretary of the Interior often proposes to retain so much money to exercise his trust responsibility that inadequate funds flow to the tribes to manage their trust resources. Take our proposal to manage Hoopa Valley timber under Section 638. Altogether, we figure the program costs about $650,000 and requires over a dozen employees (not counting seasonal fire control help.) But, to maintain two Agency level foresters and a clerk (with what it says is necessary support money) to oversee our management, the BIA wants to hold back $200,000. In addition, $85,000 in earmarked forest development money, which we counted on to help pay some of our costs, has somehow lost its special designation and now resides in a general account that, the BIA says, we cannot tap for forestry purposes. Frankly, we can't run a $650,000 program for less than $400,000.

We think the BIA should find an oversight method other than filling staff forester positions all up and down the bureaucratic chain. In the BIA, Agency level officials handle forestry technical needs and their decisions are reviewed at the Area Office. But our forestry work will be reviewed both by staff foresters at the Agency Office, and then by someone at the Area Office. Why does BIA need the intermediate steps, at a cost of $200,000 -- money that should be used for on-the-ground forest management. At most, our work should

be reviewed at the Area Office level, for we are doing Agency level work.

The BIA proposes to use an inefficient and expensive way to oversee tribal management of trust assets. It would be our hope that under the Self-Governance Demonstration Project we can persuade the BIA to investigate innovative new ways to implement its trust responsibilities, while at the same time transferring more fiscal resources to the Tribes. Even making sure we actually get all the money from the Agency level would help. Or, more dramatically, perhaps the Secretary should use retained funds to establish roving forestry audit teams to review the general direction and accomplishments of tribal forest management without nitpicking the daily details. Such a program would take fewer people and less money. With the right kind of personnel, it would also probably provide better oversight than the redundant bureaucracy BIA currently maintains.

On behalf of the Hoopa Valley Tribe, I appreciate this opportunity to testify. We stand ready to work with the Committee, the Congress, and the BIA, to initiate this innovative approach to government-to-government relations between the BIA and American Indian Tribes, the Tribal Self-Governance Project.

WCOL.TES

Northwest Indian Fisheries Commission

6730 Martin Way E., Olympia, WA 98506 Phone (206) 438-1180

**TESTIMONY TO THE
U.S. SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS**

February 18, 1988

**By Bill Frank, Jr., Chairman,
Northwest Indian Fisheries Commission**

Senator Inouye and members of the Select Committee, I am Bill Frank, Jr., Chairman of the Northwest Indian Fisheries Commission. My comments to you today represent the fisheries-related interests and concerns of the Treaty Indian Tribes of the Pacific Northwest. My message is simply this - the Treaty Indian Tribes are acknowledged governments and we hope and expect to be treated as such.

It is the stated policy of the United States Administration and Congress that they endorse the goals of self determination by the tribes and that they will work with the tribes on a government-to-government basis to assist us in becoming self-sufficient. We feel that a government must be able to pursue true self governance as well as develop a sound economy, and we feel that the amendment you are considering today will help make significant progress toward that end. The proposal to delete Section 209 of S. 1703, and replace it with the newly proposed Title III (the Tribal Self-Governance Research and Demonstration Project) is logical and well-advised. Along with the amendments to the Indian Self Determination Act already contained in S. 1703, this Act will help ensure long term tribal financial stability. These amendments will remove many administrative and regulative barriers that currently exist. Your proposals do represent a profound and thorough re-examination of one of the most important laws affecting the Indian people, and they do reflect understanding that tribal governments are fully capable of managing their own destinies.

As we understand them, the amendments you propose in S. 1703 would basically make these changes: 1. Streamline the contracting process by making P.L. 93-638 contracts intergovernmental agreements exempt from procurement regulations; 2. Allow mature contracts to be made for up to five years; 3. Permit the consolidation of mature contracts into one contract with quarterly financial reports for advance quarterly payments with only one final report and audit report; and, 4. Protect the funding base of contracts from Secretarial discretionary reduction or reduction to fund federal functions.

It is our understanding that the amendments would protect negotiated indirect costs and require federal agencies to report the status of indirect costs levels to Congress each year. Tribes would also be held harmless from the over/under recovery issues when contracting with federal agencies and would not be asked to pay these theoretical costs from previous years. Tribes could contract for all programs and activities through the Departments of Interior and Health and Human Services. The civil service benefits of federal employees who transfer to tribal employment would be protected. The Secretary of Interior could transfer ownership of any property purchased by the tribe under 638 contracts and could transfer title of any excess or surplus property.

The new Title III amendment would provide designated tribes with: 1. Planning grants to analyze, design and prepare for consolidated funding; 2. Negotiation of agreements between the tribes and the Secretary of the Interior which would allow tribes to determine and manage their own budgets; and, 3. Funding to carry out these negotiated agreements. We are supportive of this new Title III (Sec. 301) amendment and view it as an opportunity for a few tribes to explore and analyze the next steps towards enhancing true self governance.

We are very encouraged that these amendments are supportive of stable tribal governments and that they would provide the basis for improved federal-tribal working relationships. We also believe that the amendments reflect the true intent of the United States Constitution.

It should be noted that in the first three years of implementation of P.L. 93-638, eighty percent of the contracts let by the BIA/IHS were in the Portland Area Office. Tribes in the Pacific Northwest pioneered many of the P.L. 93-638 experiences and proposed, through consultation with your committee staff, corrective amendments contained in S. 1703.

We encourage your expedient favorable action on these amendments.

STATEMENT OF ROGER A. JOURDAIN, CHAIRMAN
RED LAKE BAND OF CHIPPEWA INDIANS

BEFORE THE

U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

SECTION 301, AMENDMENT NO. 1399, TO S. 1703 TO AUTHORIZE THE TRIBAL SELF-GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT

February 18, 1988

Mr. Chairman, members of this Committee, as you know I was not able to attend the hearing on this important provision, Section 301 (Amendment No. 1399). I wish to make clear how important the underlying bill, S. 1703, is to us. S. 1703 contains absolutely critical changes that will assist us in carrying on our "638" contract programs. Meanwhile, however, we are also eager to see the demonstration project contained in Amendment No. 1399 go forward.

I wish I could have been in attendance and testified in person. However, I will take this opportunity to convey my strong support for this important initiative -- the tribal self-governance research and demonstration project.

As you know, I am the elected Chairman of the Red Lake Band of Chippewa Indians. As such, I have been specifically authorized to pursue development of this tribal self-governance research and demonstration project.

Our Tribe is planning to carefully spend the planning grant we are to receive. We want to give painstaking scrutiny to what it would mean for our Tribe to enter into an agreement as envisioned in Section 301 (Amendment No. 1399).

We believe that the protections built into Amendment No. 1399 will provide us with generally sufficient security against undue risks. We recognize, however, that we are pursuing an unknown course. We want to exercise caution, but we will not let our questions keep us from exploration. The planning and development grant will go a long way in helping us clarify the issues at stake and the pitfalls to avoid.

As drafted, Amendment No. 1399 is absolutely necessary because it puts teeth into the bill. Without the specific requirements of the BIA now contained in Amendment No. 1399, we will get little if any useful budgetary and program information out of the BIA. Yet for our tribal self-governance research and demonstration project to succeed, we will very desperately need to know this information.

Our Tribal Council is seriously interested in pursuing this project. We have already committed considerable energies and funds to this end. We hope to work closely with your staff to ensure that the agreements we begin to draft and enter into are agreements which genuinely stand a good chance of achieving the high goals of this project.

This project, and the authorizing Amendment No. 1399, are actually concrete evidence of our Tribe's and your committee's commitment to implementing S. Con. Res 76. Its goals of real government-to-government relations that respect tribal sovereignty and permit actual self-determination without termination are embodied in Amendment No. 1399.

In conclusion, we wish to commend you on your efforts and your willingness to bend an ear and respond to our requests. We look forward to working with you on this and other projects in the future.

RL21888.TST

PREPARED STATEMENT OF MICHAEL T. PABLO CHAIRMAN
CONFEDERATED SALISH AND KOOTENAI TRIBES

The Tribal Council of the Confederated Salish and Kootenai Tribes' are pleased to present this written testimony to the Senate Select Committee on Indian Affairs. As a result of the House Appropriations Subcommittee on the Interior Department Oversight Hearing on the Bureau of Indian Affairs, the Confederated Salish and Kootenai Tribes were selected to be a demonstration tribe for the Tribal Self-Governance Project. As a participating tribal group in the project, the tribes are supportive of this proposed amendment, Amendment No. 1399.

The Confederated Tribes believe that this project is providing an opportunity, long needed, to truly allow Tribes the ability to adequately address reservation needs. Tribal governments want to act responsibly and effectively on behalf of their membership and reservation residents. Allowing Tribes to determine their own priorities locally, and to be able to address these priorities locally is a tremendous step forward. In addition, the possibility of doing this with adequate financial support, not diminished by federal bureaucracy, enhances the opportunity to move tribal governments ahead. The Confederated Tribes appreciate this opportunity and are fully committed to participating in the "Tribal Self-Governance Project".

The Confederated Tribes are neutral on the amendment's language which keeps the demonstration project confined to the ten tribes originally selected to participate. The Confederated Tribes are willing to work in a cooperative fashion with both

participating and non-participating tribes. We believe that research products and plans developed by this project should be made available to other Tribal governments for their observation and comment.

The Confederated Tribes offer the following section by section observations of the proposed Amendment No. 1399, Section 301 to Senate Bill 1703.

§ 301(a). The Confederated Tribes support this provision reinforcing the concept that Tribal Governments should be given the opportunity to develop their own budgets to address tribal priorities.

§ 301(b)(1). The Tribes believe that the direct funding initiative is an exciting opportunity to explore new ways to provide reservation services. This move needs to be well examined before making final decisions. Allowing the planning process to continue for two years allows for the needed time to properly study and plan for direct funding.

§ 301(b)(2). No comment.

§ 301(b)(3). Directing the Secretary to produce information that is needed to properly plan and develop direct funding proposals is helpful.

§ 301(b)(4). Again, a helpful provision demanding production of the information by the Secretary in a timely fashion.

§ 301(c)(1). This section is a much needed provision to clearly state that direct funding to tribes does not "abrogate or reduce trust" obligations of the United States to Indian Tribes.

§ 301(c)(2). No comment.

§ 301(c)(3). No comment.

§ 301(d). This provision is needed to assure demonstration Tribes that all of the dollars expended by the BIA to provide services to that Tribe will, in fact, be made available to that Tribe for program purposes.

§ 301(d)(2). This provision is needed to assure participating Tribes they will have the authority to reprioritize BIA programs to meet local needs.

§ 301(d)(3). In order for tribes to move forward with demonstration project plans without substantial worry over conflicting regulations they should be waived as this provision proposes.

§ 301(d)(4). No comment.

§ 301(e). No comment.

§ 301(f). The Confederated Tribes are supportive of this provision. It is needed to guarantee to Tribes not participating in this project that BIA services or funding will not be reduced as a result of this demonstration project.

The Confederated Salish and Kootenai Tribes thank Senator Inouye and Senator Evans for their efforts and thank the Senate Select Committee on Indian Affairs for this opportunity to provide comment.

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

P.O. Box C, Warm Springs, Oregon 97761/503 553-1161

STATEMENT OF
THE CONFEDERATED TRIBES OF THE WARM SPRINGS
RESERVATION OF OREGON
REGARDING
THE TRIBAL SELF GOVERNANCE AMENDMENT PROPOSED FOR S.1703,
THE SELF-DETERMINATION ACT AMENDMENTS.

SUBMITTED TO THE SENATE SELECT COMMITTEE FOR INDIAN AFFAIRS
FOR INCLUSION IN THE RECORD OF ITS HEARING OF FEBRUARY 18, 1988

Mr. Chairman, on the behalf of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, I wish to express our opposition to the Tribal Self Governance Research and Demonstration Project amendment, numbered 1399, proposed by Senator Evans and yourself to S. 1703, the legislation to amend the Indian Self-Determination and Education Assistance Act.

In expressing our opposition to the Self Governance amendment and its adoption to S. 1703, we also wish to make it clear that we are not against the concept of a small number of Tribes, at their own election, engaging in limited pilot block grant experiment with the Bureau of Indian Affairs. In fact, we are not necessarily opposed to a legislatively created pilot block grant project.

However, as a Tribal government that has chosen to remain under current policy and not participate in the consolidated funding experiment, we have four principal concerns: that the continuation of present policy be reconfirmed during the course of the experiment, that the Tribes participating in the experiment not gain some relative advantage over non-participating Tribes by virtue of taking part in the experiment, that non-participating Tribes not be harmed in any manner by the experiment, and that S. 1703, the Self Determination Act amendments, not be slowed down on account of the experiment. Unfortunately, we do not believe that any of these concerns are adequately addressed in either Amendment Number 1399 or the manner in which the amendment is being considered.

PRESENT POLICY CONTINUED

First of all, we urge that the Congress engage in an appropriate and full fledged debate on the consolidated funding experiment. Necessary documentation must be generated, and a solid legislative history laid down, to assure that the project is not misconstrued at some later date. It should be pointed out that the five year term proposed by Amendment 1399 could involve

three Presidencies and four Congresses, which offers a more than ample opportunity for the separate and experimental origins of consolidated funding to be forgotten or ignored as a part of the distant past.

It is particularly important that the present and well-established Tribal - Federal policy of Self Determination remain consistent before, during and after the experiment. The experiment in itself is not a policy change. That must be emphasized. Only after the experiment has been concluded and evaluated should a national debate take place about changing national Tribal - Federal policy. If for some reason the consolicated funding project is not a success, established policy must be preserved for not only the non-participating Tribes, but also as a point of return for those participating Tribes who may no longer wish to engage in consolidated funding.

If the continuation of underlying policy is not made clear, it could give the appearance of uncertainty and confusion on national Indian policy, and a perceived lack of direction and Federal commitment could offer a ripe opportunity for later Administrations or Congresses to impose new policies that could be detrimental to the Tribes.

CONTINUED EQUITABLE SHARE OF FUNDING

Second, the consolidated funding experiment must not be used as a pretext by the participating Tribes to gain some relative advantage over the non-participating Tribes, particularly with regard to appropriations. The share of the Bureau of Indian Affairs funding that is either received or otherwise spent on or dedicated to the participating Tribes should not increase for the participating Tribes while non-participating Tribes receive no such increase. To allow such an increase would not only be disingenuous on the part of the Congress and simply unfair to the non-participating Tribes, but would also seriously skew the findings and conclusions about the experiment. If participating Tribes were to somehow receive a relatively increased share of B.I.A. funding due to being in the project, it would give a misleading appearance that the project is more successful than it actually might be.

Amendment Number 1399 not only does not contain any provisions to assure that the involved Tribes receive a consistent share of B.I.A. appropriations, but there are distinct possibilities it could be construed to give participating Tribes the right to increase their share of overall B.I.A. funding. That must be corrected.

STRONGER "HOLD HARMLESS" PROVISIONS

Third, stronger provision must be made that non-participating Tribes will not be disadvantaged as a result of the experiment. This protection must be included in any experimental consolidated funding legislation in a manner more certain than the present simple assurance that non-participating Tribes be

held harmless. The very reason that the ten involved Tribes are so adamant about having their detailed legislation is to protect them from the Bureau of Indian Affairs and to make certain that they stay in the drivers seat with regard to the program. When it comes to protecting their interests in the project, the involved Tribes refuse to leave much discretion or responsibility in the hands of the B.I.A. because they do not trust it. Yet, the drafters of Amendment Number 1399 appear perfectly content to leave the protection of the non-participating Tribes subject only to the most general of statements. This is a manifestation of the unfair exclusivity with which Amendment Number 1399 was drawn up.

Non-participating Tribes must be afforded an equal chance to draw up their own more specific protection for inclusion in any consolidated funding experiment legislation. Such protection could include the creation of a separate account of B.I.A. funds to affected programs, agencies and areas to make up whatever funds are necessary to preserve the unaltered administration of Bureau functions to non-participating Tribes. There should be a ban on any consolidating of B.I.A. agency of area offices, and non-participating Tribes should also negotiate with the B.I.A. about any impacts.

S. 1703 UNIMPEDED

Forth, any legislative creation of an experimental consolidated funding project must not be allowed to impede S. 1703. The Indian Self Determination Act is the most successful Federal policy for Indian affairs in the history of the United States. It was enacted only after years of debate, and only in more recent years has it been widely adopted by Tribes. Many of its flaws are addressed in the currently pending amendments, which should allow Self Determination to move into a stage of new activity. S. 1703 has been extensively debated and reviewed by the Tribes. Tremendous amounts of time and consideration have been expended on it, and it now presents an orderly, understood evolution of Self Determination that will affect numerous Tribes and has their backing. Many Tribes are relying on S. 1703's enactment for drastically needed relief.

Yet, at present, there is every appearance that amending S. 1703 with an experimental consolidated funding project will embroil the legislation in controversy and delay. As is acknowledged by every person involved in the consideration of an experimental consolidated funding project, it is a very significant, even bold, undertaking in Tribal - Federal relations. It presupposes a quantum leap to the "natural culmination" of Self Determination. For better or for worse, it could drastically loosen the bonds between the Tribes and the Federal government. While the original Self-Determination Act was subject to years of Congressional and Tribal debate and scrutiny, consolidated funding is now being proposed - amid tremendous controversy - to move from inception to Senate passage in just four months. In so doing, it has almost totally overshadowed S. 1703's basic aim of strengthening Self Determination, so that the

legislation has become the radical block grant bill rather than the evolution of Self Determination. It has become a case of the tail wagging the dog, and when future policy makers look back, they may only see the tail.

THE NEED FOR SEPARATE CONSIDERATION

The implications of consolidated funding are as far reaching as they are unknown. It could weaken or even destroy great portions of the unique and fragile Tribal - Federal relationship. Such an idea should not be set in motion without firmly establishing the proper and necessary underpinnings. Yet, that does not appear to be the case here, where there is a rush to judgement for the benefit of an exclusive grouping of ten Tribes. The amendment drawn up on their behalf is poorly understood by other Tribes and deserves the input of the non-participating Tribes for both clarification of present language and added protection.

All of this could be accomplished neatly by considering legislation for an experimental consolidated funding project as a separate and free-standing bill. That would provide an adequate opportunity for the full participation of all interested Tribes, provide a clean slate for the inclusion of provisions relating to all affected parties, and establish a complete legislative history.

Because the FY 1988 Appropriations law has already initially funded the project and authorized it to proceed, there is no compelling need to force ill considered legislation on unwilling Tribes through amending S. 1703. A more orderly pace will assure full examination of all issues and allow satisfactory provisions to be drafted. We therefore urge the Senate Select Committee on Indian Affairs to allow S. 1703 to continue on its own and to introduce free-standing legislation to create a statutory experimental consolidated funding project. On balance, that would appear only reasonable. To insist on amending S. 1703 would permit ten Tribes to impact all other Tribes with a delay of needed Self Determination amendments and the possibility of uncertain and inadequate statutory provisions. On the other hand, a separate bill will not interfere with the project for the ten Tribes.

AMENDMENT NO. 1399 UNCERTAINTIES AND INSUFFICIENCIES

As printed in the Congressional Record of February 3, 1988, the text of Amendment Number 1399 contains numerous ambiguities and omissions that must be corrected in whatever legislative form the experimental consolidated funding project takes.

In Subsection (a), the expression "enabling tribes to determine their own budgets ..." could be interpreted as permitting Tribes to develop new total funding amounts to be requested from B.I.A., particularly when taken with Senator Inouye's statement in his introductory remarks that a pre-award analysis is to be made of all B.I.A. "functions with the idea of

determining minimum levels below which funding for services should not fall. Particularly in the national [sic] resources area, funding levels should be based on a reservation by reservation analysis of what is needed." Are Tribes to analyze their own budget needs, and then present that budget to the Bureau to be funded. It is unclear, but to allow such would give the participating Tribes a windfall. Perhaps it would be clearer if it said "enabling tribes to allocate funds as they choose out of the total provided."

A section of "Congressional Findings", or some similar provisions, should be included in the body of the amendment expressing the continuation of Self Determination as the principal Federal policy toward the Tribes, and emphasizing that this experiment is a single, separate project that is not to have any bearing on the carrying out of Self Determination until such time as the project is over, evaluated, and debated.

Subsection (b) planning grants are to be spent within two years of appropriation, but there is no limit on the number of appropriating years. The planning grants subsection should specifically include the funding provided in the FY 1988 Appropriations Act, which otherwise is not included. While planning grants are authorized for research and preparation, they do not authorize the actual conducting of negotiations. And the review of prior B.I.A. budgets is just too sweeping. For instance, budgets for Areas without any participating Tribes should not have to be thoroughly examined.

In subsection (c), the provision where the participating Tribes can negotiate to receive funds for programs "for which a Tribe could contract" should read "for which such Tribe could contract".

Subsection (d) should be modified to eliminate the expression "at least", and to make it clear that participating Tribes are to receive funds only in the amount that the B.I.A. would have otherwise expended for that Tribe. Also, contract support awards should be reduced to the extent a program's administrative cost would have been covered by the B.I.A. agency, area, or central office administrative funds the Tribe is to now receive. The waiver of Federal law and regulation is over broad and should be tightened up. A method of including consolidated funding in the annual B.I.A. budget request should also be set out, with provisions for the consolidated amounts to reflect additions and decreases.

Subsection (f) should contain a specific remedy for Tribes who belive they have been hurt by the implementation of the consolidated funding program. Such considerations could include the establishment of a "hold-harmless" appropriations line item to maintain service levels and B.I.A. organization where consolidated funding would have an impact on non-participating Tribes. A ban against any B.I.A. restructuring of its local,

regional or national organization as a result of consolidated funding should be included, and non-participating Tribes should also engage in negotiations with the Bureau of Indian Affairs about any impacts due to consolidated funding.

Clearly, there is a tremendous amount of work that still must be dedicated to the idea of a consolidated funding experimental project. The above considerations only scratch the surface. Therefore, again, the Confederated Tribes of the Warm Springs Reservation of Oregon urge that this project be separately legislated, so that it can receive the full benefits of Congressional and Tribal attention before it is launched into an uncertain future.

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PLEASE REPLY TO WASHINGTON, D.C. OFFICE

MEMORANDUM

TO: Joe Tallakson

FROM: M. Frances Ayer

DATE: January 15, 1988

RE: Hill Meeting On Self-Governance Grants Authorizing Legislation

On January 13 we met with Alan Parker, Patricia Zell and Michael Hughes from the Senate Indian Affairs Committee and with Alex Skibine from the House Interior Committee to discuss our legal concern that there is a need for detailed legislation authorizing the self-governance demonstration grants. The following is a report of what we learned.

1. S. 1703 is on a very fast track, with passage by the full Senate expected in late January or early February. The House is prepared to quickly thereafter pass a substantially similar bill. Senior staff believes the President will sign it.

2. House and Senate staff said it will be impossible to revise section 209 in the time period before the Senate and House adopt S. 1703 and send it to the President.

3. Senate staff believe Chairman Inouye will delete section 209 on the Senate floor and make a statement promising to work closely with the 10 self-governance Tribes to introduce a separate bill dealing with the complex issues it raises. No versions of section 209 are acceptable to the Senate staff, including the present "Lummi" proposal endorsed by the 10 Tribes as a starting point.

4. House staff also believe all versions of section 209 are unacceptable and flatly predict they would be deleted by the House Committee. Should a more nearly acceptable version be included in S. 1703 for House consideration, study and hearings would be required, leading to delay in passage of S. 1703.

5. Senate staff believe the planning and study being conducted by the 10 self-governance Tribes makes any section 209 provision premature. Instead, the Senate Committee proposes to work closely with the 10 Tribes to implement the results of their planning and study, including, hopefully, a base funding study-analysis leading to statutory self-governance funding formula requirements.

6. Alan Parker expressed an interest in attending the 10 Tribes' January 21 meeting in Washington, D.C. to discuss these matters more fully and explore how the 10 Tribes' study and planning work can interface with the new Special Subcommittee on Investigations' management study.

7. Senate staff believe S. 1703, along with its Committee report language, will remove many of the obstacles to consolidated contracting which have led Tribes to develop the self-governance grant concept. However, they seek immediate feedback from the 10 Tribes to discover what S. 1703 does not address, which information will be included in Chairman Inouye's floor statement deleting section 209 and pledging to work with the 10 Tribes to develop and introduce separate legislation. Mr. Parker said a copy of that statement will be available for the 10 Tribes' review at the January 21 meeting.

cc: Alan Parker
Patricia Zell
Alex Skibine
MFA/lam
0099/00000

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PLEASE REPLY TO WASHINGTON, D.C. OFFICE

BRIEFING PAPER ON LEGAL ISSUES
POSED BY THE TRIBAL SELF-GOVERNANCE PROJECT

January 5, 1988

I. NEED FOR AUTHORIZING LEGISLATION TO IMPLEMENT THE TRIBAL SELF-GOVERNANCE PROJECT.

A. INTRODUCTION.

During the current planning year phase of the tribal self-governance project, there is a need for legislation to be developed by the participating Tribes that authorizes them to assume certain obligations and expressly clarifies what obligations remain with the United States government. Such legislation would help protect against costly lawsuits from tribal members and special interest organizations objecting to new tribal funding priorities. It could repeal or waive certain statutory obligations of the participating Tribes and of the United States government.

B. CURRENT LEGISLATIVE LANGUAGE AND PROPOSALS.

1. SWIMMER'S PROPOSAL. Assistant Secretary Swimmer has proposed authorization bill language to implement tribal block grants. His language is brief and very general. It does not cite the specific programs, statutory authorities or regulations to be affected. It attempts to immunize the Department of the Interior from any liability for services or benefits provided by a participating Tribe and from any act or omission of the Tribe in doing so.

2. SENATE INDIAN COMMITTEE VERSION. The Senate Select Committee on Indian Affairs has adopted a modified form of Swimmer's proposed language (proposed by Senator Evans), appearing in § 209 of the "marked-up" and "reported out" version of S. 1703 (The Indian Self-Determination Act Amendments of 1987) that awaits enactment. This Senate version, while an improvement, is likewise brief and very general. Similarly, it does not cite the specific programs,

statutory authorities or regulations to be covered. It replaces Swimmer's proposed language on liability with a general statement that the Department of the Interior is "not obligated to provide services or benefits to a Tribe or its members to the extent that funding is provided for such services or benefits" under a Tribe's self-governance agreement. And it states that a participating Tribe is "not obligated to provide the same services and benefits" as the Department of the Interior would otherwise have provided. The legal effect of such language is at best unclear.

3. LUMMI PROPOSED AMENDMENT. In an effort to remedy the serious defects in the Swimmer-Evans language, the Lummi Indian Business Council proposed a version which adds many essential provisions and removes language claiming to render the Department of the Interior immune from liabilities. To complete the task of improving the Swimmer-Evans language, the Lummi version should be expanded to address the specific issues of trust obligations and to add the specific programs, statutory authorities or regulations to be affected.

C. GENERAL APPROPRIATION OR AUTHORIZATION LANGUAGE IS NOT SUFFICIENT.

The Indian programs and services affected by the tribal governance project arise out of a complex set of authorizing statutes and regulations. It is axiomatic that the trust responsibility of the United States to Indian people is one based upon specific statutes, regulations, course of dealings, specific treaties and executive agreements, as recently affirmed by United States Supreme Court in United States v. Mitchell, 463 U.S. 206, 225 (1983) (Mitchell II).

The tribal self-governance project will address and likely alter these trust and program obligations in specific ways. This raises a serious issue which the various versions of legislative language seem to address but in fact do not -- what are the continuing trust and statutory obligations of the United States Government for services and benefits and how are these responsibilities to be divided between the United States and the participating Tribes? The several versions do not expressly amend specific statutes. Instead, they all purport to repeal by implication the specific authorities in prior legislation.

The courts typically strike down congressional attempts to use legislative language to repeal statutes by implication. Ten years ago the Supreme Court held, in TVA v. Hill, 437 U.S. 153, (1978), that this policy applies with even greater force when the claimed repeal rests solely on an appropriations act. The issue in TVA v. Hill arose because Congress had passed a specific statute, the Endangered Species Act, which prohibited all federal construction that would destroy an endangered species. The snail darter was an endangered species and was imperiled by construction of the Tellico

Dam. Nevertheless, the appropriations committees continued to fund construction of the Tellico Dam, implying that the Act did not apply to the dam or that the construction should be completed regardless of the Act's requirements. Nothing in the appropriations acts expressly stated that the Act's requirements should be waived. The Court said such repeals by implication are strongly disfavored, especially in the context of an appropriation bill because legislators voting for the bill are entitled to believe that the funds will be devoted to purposes that are lawful. The Court also noted that the rules of both Houses of Congress provide that appropriation measures may not change existing substantive law and thus an appropriation committee's statement does not operate to repeal or modify substantive legislation.

The initial support for the tribal self-governance project has come from the appropriations committees, principally from Rep. Sidney Yates, Chairman of the House Appropriations Subcommittee on Interior and Related Agencies. However, TVA v. Hill and its line of cases indicates that the participating Tribes cannot safely rely on brief, general statements contained in appropriation measures, or in regular substantive legislation.

An established rule of statutory construction is relevant to this analysis. Indian rights and immunities are not to be deemed repealed implicitly; rather, explicit statutory language is required. See Northern Cheyenne Tribes v. Hollowbreast, 425 U.S. 649, 656 (1976); Mattz v. Arnett, 412 U.S. 481, 504-505 (1973); and Menominee Tribe of Indians v. United States, 391 U.S. 404, 413 (1968).

Moreover, expressions in statutes passed for the benefit of Indian Tribes must be liberally construed and all doubts resolved in the Indians' favor. Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918). See Choate v. Trapp, 224 U.S. 665, 675 (1912); Antoine v. Washington, 420 U.S. 194, 199-200 (1975). The trouble comes, however, with applying the rule of construction. It raises the question of just what individual Indians, special interest groups, non-participating Tribes, bureaucrats, and the courts will consider favorable. Since the theoretical purpose of most statutes authorizing Indian programs was to protect Indians, a court could construe a general self-governance authorization statute as not being in the Indians' favor. While this interpretation may well be disputed by Indian Tribes in this era of self-determination, a court could certainly see it that way.

Absent express, comprehensive authorizing legislation for the tribal self-governance project, the statutory obligations of the United States and the Tribes would remain the same as they now are. This would provide legal opportunities for bureaucrats to sabotage the Tribes' initiatives, and for tribal members and special interest groups who disagree with tribal funding priority changes to short-circuit the tribal political decision making process and snarl tribal program administration. Inevitably it would lead to costly litiga-

tion to clarify the Tribes' obligations to the United States and to tribal members.

D. DUE PROCESS PROCEDURES AND ISSUES MUST BE ADDRESSED.

Another significant issue arising out of the tribal self-governance project involves the procedural due process rights owed to tribal member beneficiaries of government programs defunded in favor of other tribal budget priorities. The courts have fashioned varying procedural rights according to the specific benefit involved (e.g., pre-termination trial-type hearings in the case of basic welfare benefits in Goldberg v. Kelly, 397 U.S. 254 (1970); post-termination hearings in the case of disability or social security payments in Mathews v. Eldridge, 424 U.S. 319 (1976).

Generally, certain programs such as welfare or public assistance benefits are known as "statutory entitlements" whose recipients have a legally enforceable right to collect the benefits if they can establish that they meet the statutory requirements of eligibility. It is likely that Bureau of Indian Affairs social services monies now designated as general assistance funds would be considered by the courts to be "statutory entitlements" just like general welfare payments and thus require the participating Tribe or United States to provide trial-type hearings before terminating the benefits. Such a welfare "entitlement" arises not from any trust relationship but simply because of the nature of the program. (It is reasonably clear that other Indian services programs such as education would not require these more burdensome procedural rights.)

It would be ill-advised for Tribes to negotiate agreements that lack an express delineation of the Tribes' and the United States's responsibilities and obligations to individuals. Additionally, tribal procedures giving minimal due process should be developed to avoid having former beneficiaries bringing suit against the Tribes to challenge funding changes.

II. LEGAL ISSUES REQUIRING FURTHER EXAMINATION.

A. AN APPROACH TO GENERAL STATUTORY REVIEW.

Depending on the scope of a block grant under the tribal self-governance project, a Tribe's performance of functions currently performed by the Bureau may be barred by any number of statutory provisions. Obviously these statutes would need to be amended if the proposal is to go forward. A review of each of the subparts of 25 C.F.R. would determine whether they relate to functions currently performed by federal employees. The recitation of authority for the C.F.R. provisions, or the cited Federal Register provisions, will lead one to the underlying statutes. It is those statutes which must be reviewed for possible amendment.

The Bureau's budget proposals also provide the statutory authorities. Those should also be looked at individually, since they may be somewhat different than the authorities relied upon in 25 C.F.R. A general review of Title 25 of the United States Code should also be made.

B. THE TENSION BETWEEN TRUST RESPONSIBILITY AND BLOCK GRANTS CONTRACTING FEDERAL SERVICES MUST BE ANALYZED.

In United States v. Mitchell, 463 U.S. 206, 225 (1983) (Mitchell II), the Supreme Court approved the following language from a 1980 decision of the Court of Claims:

> [W]here the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund, or a trust, or a fiduciary connection.

In Mitchell II, of course, the Court relied on 25 U.S.C. §§ 406-407, and the forest regulations, which "clearly give the Federal Government full responsibility to manage Indian resources and land for the benefit of the Indians." The Court pointedly said that it was those specific statutes and regulations which "establish a fiduciary relationship and define the contours of the United States' fiduciary responsibilities." 463 U.S. at 224.

An examination of breach of trust law is well warranted in connection with the block grant planning process. Pub. L. 93-638 makes it clear that it does not authorize termination of a fiduciary relationship. Nevertheless, the Bureau reduces 638 funding levels to Tribes, claiming a need to retain funds in order to exercise continued trust oversight. If Tribes want to stop subsidizing the additional layers of Bureau bureaucracy and instead put those dollars to work in programs, one possible result may be the foregoing of a Mitchell breach of trust suit over the conduct of the program if things go awry.

Breach of trust law has some clear limitations, and additional limitations are being engrafted upon the law by the Claims Court every month. First, the Federal Government often has conflicting statutory responsibilities. The Pyramid Lake case, Nevada v. United States, 463 U.S. 110 (1984), indicates that it is not a breach of trust for Interior to promote the interests of one set of water users at the expense of tribal water needs. Begay v. United States, ___ Cl. Ct. ___ (August 7, 1987) illustrates an additional limitation.

Begay involved damages to Navajo Indians relocated by the Hopi-Navajo Relocation Commission. The plaintiffs argued that Commission employees advised them improperly, which led to their loss of the substitute housing they were supposed to receive, and various other injuries. However, the court relied upon the fact that Congress had set a specific ceiling on the amount of benefits which could be provided to relocated Indians, and that the plaintiffs had received those maximum benefits. The court concluded that whether or not those benefits were sufficient to meet the Indians' needs, it was not a breach of trust for the Commission to refuse to do more and that the statute did not make the Commission an insurer of the Indians' well-being.

In addition, although a whole series of statutes give the BIA approval functions with respect to conveyances, contracts, attorneys, licenses, rights of way, etc., it is probably also true that in most situations the Bureau's performance of these functions only adds delay to transactions which receive approval in the end. Frequently, the Bureau exercises very little real oversight of what is going on, and generally, the Bureau's approval of an unfortunate contract will not render the United States liable for breach of trust.

The Government's responsibilities under Mitchell II are statutory ones, and if a statute authorizes the Government to relinquish comprehensive control of programs or properties by giving part or most of the control to Indian Tribes, then the Government probably is not going to be liable for the results of carrying out those directives. Notwithstanding Pub. L. 93-638's intent, we know of no breach of trust case in which the Government was held liable for the misconduct of Indian programs contracted under 93-638. 638 contracts by their very nature eliminate the comprehensive control which was pivotal in the Mitchell II finding of fiduciary obligation. We cannot immediately think of any constitutional restriction against legislation which would authorize the Government to turn over specific responsibilities and duties to Indian Tribes, and thereby be relieved of the trust responsibility which would ordinarily flow from the Government's comprehensive supervision or elaborate control of tribal monies, properties or programs. Therefore, Tribes may not be giving up much by seeking through block grants the funds currently retained for trust responsibility purposes. This area requires further analysis.

C. THE RISKS OF ENDING FEDERAL SUPERVISION.

The Klamath termination legislation, 25 U.S.C. § 564, is probably typical of the 1950's termination legislation. Its purpose was "to provide for the termination of federal supervision over the trust and restricted property of the Klamath Tribe of Indians.... and for a termination of federal services furnished such Indians because of their status as Indians."

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Block grants in lieu of BIA services have the potential for accomplishing the first half of this purpose: termination of federal supervision. This may be acceptable to many well-organized Tribes. However, the ability and willingness of Tribes to undertake supervision of trust property and Indian programs varies widely.

There is much to be said for tribal reprogramming of appropriated funds from the services the Bureau would perform to other services determined to be more appropriate by the tribal government. Tribes may readily wish to divert services monies into capital improvements in a particular year, or vice versa. Tribes may be able to administer programs more uniformly if laws are amended so that Tribes establish criteria to avoid the differing eligibility requirements currently attached to various federal programs such as the Indian Finance Act, Snyder Act, Housing Programs, etc. Also, tribal approval of transactions without Bureau oversight could lead to much quicker and efficient decision-making.

On the other hand, historically, federal restraints on alienation of Indian land, and general federal restraints on decision-making by Indian Tribes, are probably somewhat responsible for the fact that Tribes and reservations continue to exist to this day. The Menominee Tribe was considered very sophisticated prior to termination, but ending all federal supervision over programs and lands contributed to many problems.

D. SELF-GOVERNMENT OR TERMINATION.

The block grant concept as proposed by the ten Tribes is a tribal self-government initiative. From a tribal perspective, Mr. Swimmer's so-called "initiatives", if carried through to completion, could spell disaster for Indian Tribes. Abrogation of the trust responsibility, privatization of the BIA's function in areas of natural resources, trust funds, etc., and the administration's approach to economic development on Indian reservations has raised the specter of termination in the minds of many. Mr. Swimmer has pushed to get the United States out of the "Indian business", to disband or diminish the role of the BIA; and, as stated by Mr. Swimmer at a Mellon Bank meeting in Portland last year, he is looking for ways to "get the Indians off the government dole." With this in mind, the careful approach of the ten self-governance Tribes in embracing the block grant concept is certainly warranted, given who they are dealing with and the administration's approach to the "Indian problem".

E. UNEQUAL NON-PROTECTION.

As the tribal government funding proposal demonstrates, the ten Tribes involved are acutely aware of the impact of the block grant concept on those Tribes that choose not to be involved.

There are a number of statutes that restrain or prohibit Indian power to act on their own behalf and in their own self-interest. The Non-Intercourse Act, statutes dealing with liquor on Indian reservations, statutes dealing with criminal jurisdiction, the trust allotment acts, and a large part of the Indian Reorganization Act come to mind. These laws, and many others, are designed to "protect" the Indians. They infringe upon tribal political autonomy and self-determination.

If the block grant program is not designed to be shoved down the throats of the Indians, then the legislation must have certain protective language to allow Tribes to continue under the present system if they wish to do so. A thorough analysis of the effect of protective legislation on Indian Tribes is necessary. There are both good and bad effects. Has such legislation actually served the purpose of protecting the Indians? Isn't the trust responsibility something more than a guardian-ward relationship? How can we reconcile the trust responsibility, tribal sovereignty, and self-determination with such protective legislation?

F. A FUTURE FOR FEDERAL PREEMPTION.

Federal preemption is a primary doctrine used by the courts to invalidate state jurisdiction on Indian reservations. Exemption from state taxation is an extremely important aspect of doing business on an Indian reservation and is an important advantage to Tribes in their quest for economic development and self-sufficiency.

Pervasive federal regulation or involvement in a particular activity on an Indian reservation or involving Indian Tribes is the major factor in the Supreme Court's consistently holding that federal preemption can defeat a state tax. For preemption to apply, Tribes must show both an economic impact as well as extensive federal involvement in the activity. White Mountain Apache v. Bracker, 448 U.S. 136 (1980) involved exclusive regulation by the Federal Government over the harvesting, sale and management of tribal timber. In Warren Trading Post, 380 U.S. 685 (1965) and Central Machinery, 448 U.S. 160 (1980) the Supreme Court struck down state taxation of non-Indians because of extensive federal regulation of persons who trade with Indians. Ramah Navajo School, 458 U.S. 832 (1982) and Marty Indian School, 824 F.2d 684 (8th Cir. 1987) involved federal preemption of state taxation on the basis of the extensive federal statutes and regulations governing Indian education, including the Snyder Act, the Johnson-O'Malley Act, and the Indian Self-Determination Act.

The effect the block grant program might have on federal regulatory and statutory involvement in particular tribal activities

and how this may affect the federal preemption doctrine as applied to tribal jurisdiction must be carefully considered. That analysis will help to understand the future of federal preemption which in turn could have a tremendous impact on Indian economic development, sovereignty and reservation jurisdiction.

III. CONCLUSION.

Given the myriad, complex statutory obligations which will be affected by the tribal self-governance project, a comprehensive legal review should be conducted and express legislative authority proposed in this FY 1988 planning year phase before Tribes agree as sovereign entities to a transfer of obligations (or even an assumption of mutual obligations).

The issues raised with respect to vested rights, due process, tribal shifting of priorities contrary to established congressional program priorities, the effects on existing statutes dealing with Indians, tribal liability, taxation and new causes of action, and other legal issues involved in the block grant proposal should be more fully examined. Tribal leadership can then make the important decision whether the specific elements of the trust responsibility, and many related responsibilities, should be relinquished. If not, then a carefully tailored framework can be crafted in authorizing legislation which honors the statutes, regulations, course of dealings, treaties and agreements comprising the trust responsibility.

DRAFT- AUTHORIZING STATUTES FOR VARIOUS BIA PROGRAMS

1. EDUCATION

a. School Operations
   1. The Snyder Act
   2. The Education Amendments of 1978 Pub.L. 95-561
   3. Pub. L. 99-228
   4. Chapter 1 of Pub.L. 97-358
   5. Pub.L. 94-142 (Handicapped Act)
   6. Indian Education Technical Amendments of 1985
   7. Indian Alcohol and Substance Abuse Prevention and Treatment Act

b. Johnson O'Malley
   1. Johnson O'Malley Education Act of 1934 as amended
   2. The Snyder Act
   3. The Indian Alcohol and Substance Abuse Prevention and Treatment Act

c. Continuing Education
   1. Tribally Controlled Community Colleges Act
   2. The Snyder Act

2. INDIAN SERVICES

a. Tribal Government Services
   1. The Snyder Act
   2. The Judgement Funds Distribution Act
   3. The Indian Reorganization Act
   4. The Indian Civil Rights Act
   5. The Indian Alcohol and Substance Abuse Act

b. Social Services
   1. The Snyder Act
   2. The Indian Child Welfare Act

c. Law Enforcement Act
   1. 18 U.S.C. 3055
   2. The Major Crimes Act
   3. The Indian Alcohol and Substance Abuse Act

d. Self-Determination Services
   1. The Single Audit Act
   2. Pub.L. 93-638

e. Employment Development
   1. The Snyder Act
   2. The Adult Vocational Training Act , Pub.L. 84-959

ECONOMIC DEVELOPMENT SERVICES

a. Business Enterprise Development
   1. The Indian Financing Act
   2. The Snyder Act
   3. The Indian Arts and Crafts Act
   4. The Indian Reorganization Act

b. Road Maintenance
   1. The Surface Transportation Act
   2. 25 U.S.C. 318a

NATURAL RESOURCE DEVELOPMENT

a. Agriculture
   1. The Prairie Dog Act
   2. The Snyder Act
   3. Various Tribal specific statutes

b. Forestry
   1. The Indian Reorganization Act
   2. The Snyder Act
   3. Various Forestry Acts (Tribal)

c. Water Resources
   1. The Snyder Act

d. Wildlife and Parks
   1. Various Court decrees
   2. The Snyder Act
   3. The Indian Reorganization Act
   4. Various Court Settlements - U.S. v. Mich, Bolt etc.
   5. U.S. Canada
   6. Alaska National Interests Lands Conservation Act
   7. Anadromous Fish Act
   8. Bald Eagle Act
   9. Black Bass Act
   10. Endangered Species Act
   11. Fish and Wildlife COordination Act
   12. Great Lakes Fishery Act
   13. Lacy Act
   14. Indian Religious Freedom Act
   15. Anadromous Fish Act
   16. Marine Mammal Protection Act
   17. Migratory Bird Conservation Act
   18. National Environmental Policy Act
   19. Pacific Northwest Electric Power Act
   20. Salmon and Steelhead Conservation Act

e. Minerals and Mining
   1. The Snyder Act
   2. Various Minerals Statutes specific to the mineral or activity

f. Irrigation and Power
   1. Snyder Act
   2. 25 U.S.C. 385 and other collections statutes
   3. Indian Reorganization

TRUST RESPONSIBILITIES

a. Rights Protection
   1. National Environmental Policy Act
   2. Archeological Resource Protection Act
   3. National Historic Preservation Act
   4. Nuclear Waste Policy Act
   5. Clean Air Act
   6. Clean Water Act
   7. Resource Conservation and Recovery Act
   8. Superfund Act
   9. Federal Environmental Pesticide Control Act
   10. Comprehensive Environmental Response Act
   11. ANCSA
   12. ANILCA

b. Real Estate and financial trust services
   1. 25 U.S.C. 176 on contracts for services on trust lands
   2. 25 U.S.C. 311-328 on alienation of lands
   3. 25 U.S.C. 39 on sub-surface leases
   4. 25 U.S.C. 398 on heirship to lands
   5. Pub.L. 97-459 the Indian Land Consolidation Act

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January 29, 1988

GENERAL MEMORANDUM NO. 88-3

RE: Senate Action on Indian
Self-Determination Act Amendments

Senate action on S.1703, a bill to amend the Indian Self-Determination and Education Assistance Act, Public Law 93-638 (the "Act" or "638"), has been delayed in order to hold a hearing on the provision authorizing a model program under which the Secretary of the Interior may enter into an agreement with an Indian tribe to consolidate all BIA funds which the tribe is eligible to receive under the Act so that the tribe may administer such funds for purposes determined by the tribe. The Senate Select Committee on Indian Affairs (the "Committee") initially ordered S.1703 reported on October 29, 1987. See our General Memorandum No. 87-96. The Committee made further changes to the bill (discussed below) in a second mark-up on December 9, and reported the bill December 22. (This memorandum covers only the December 9 amendments and significant report language; for a discussion of other provisions in the bill, see our General Memorandum No. 87-96.)

1. Consolidated Funding. At its October 29 mark-up, the Committee agreed to include a provision (§209) requested by the Bureau of Indian Affairs (BIA) to authorize a three-year "funding flexibility demonstration project," involving up to ten tribes. As modified at the subsequent mark-up, that provision, now entitled "consolidated contract funding," would authorize the Secretary of the Interior to pay to a tribe an amount at least equal to the amount the tribe would have been eligible to receive under "638" contracts for direct and indirect costs (except for funds provided under the Indian School Equalization Formula (ISEF) pursuant to Public Law 95-561). Such consolidated funding would be subject to P.L. 93-638. The Committee also deleted the provision limiting the program to ten

tribes.

Section 209 provides, in part:

> The Secretary of the Interior shall not be obligated to provide services or benefits to a tribe or its members to the extent that funding is provided for such services or benefits pursuant to this section: Provided, That a tribe receiving funding pursuant to this section is not obligated to provide the same services and benefits as the Secretary would otherwise have provided.

Some tribal leaders and members of Congress are concerned that this section would relieve the Secretary of the Interior of the responsibility to provide any services to a tribe receiving consolidated funding even if essential services are not being provided by the tribe. The Committee report explains:

> This provision is intended to allow a tribe maximum flexibility to use Federal funds to fashion programs for its members. It is not intended, as section 210 of the Committee amendment and section 111[*/] of the Self-Determination Act make clear, to authorize or require the termination in any way of the existing trust responsibility of the United States with respect to Indian people.

There is a coalition of ten tribes which back this provision, but which are dissatisfied with the way it is

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*/ Both of the cited provisions state:

> "Nothing in this Act shall be construed as -- . . . (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people."

currently drafted.**/ These tribes are in the process of discussing alternative language with the Committee staff which would limit the provision to the ten tribes and make other changes. At their request, Senator Daniel Inouye, Committee Chairman, has agreed to hold a hearing on the provision. The hearing has not yet been officially scheduled, but will probably be held February 18, according to Committee staff.

In addition, we understand that the provision is unacceptable in its present form to the House Interior and Insular Affairs Committee and that, when the bill goes to the House, the House will probably recommit the bill to the Interior Committee for a hearing. (Although the House previously passed its own amendments, H.R. 1223, see our General Memorandum No. 87-96, we understand that, but for section 209 and, possibly, the Federal Tort Claims Act provision discussed below, the Senate bill is generally acceptable to the House and would probably be passed by the House as is or with minor amendments acceptable to the Senate in order to avoid a conference.) The Interior Committee's concerns are (1) the provision's effect on the federal trust responsibility; (2) there are no protections to assure the provision of services to the Indian people; (3) the BIA may coerce tribes to participate in the program; and (4) the BIA may encourage tribes to participate in the program by offering increased funding, achieved by reducing the funding for other tribes. Interior Committee staff have expressed to us that the alternative language currently under consideration goes a long way toward resolving these problems, and that the Interior Committee may be able to reach agreement with the Senate on acceptable language after holding its hearing.

Although we understand the desire of these ten tribes to perfect section 209, we are concerned that the effect of delaying passage of the bill in order to improve section 209 will be detrimental to many tribes now suffering from policies and practices of the BIA and the IHS which S.1703 will overrule. Because Congress will be out of session for both the Republican and Democratic National Conventions, it is critical to obtain enactment of S.1703 before this summer so that the benefits of the amendments will apply to contracts in fiscal year 1989. Tribes which are concerned about the delay in enacting the amendments should make their views known to Senator Inouye and to their own Senators. We would be happy to assist in drafting letters to the Senators.

**/ The Continuing Resolution making appropriations for fiscal year 1988 included $1 million for these ten tribes for grants to plan for consolidated funding.

2. Federal Tort Claims Act. In a dramatic shift, the Committee amended the bill to extend the Federal Tort Claims Act (FTCA) to all "638" contractors, including those contracting with BIA. An earlier provision would have extended FTCA coverage to tribal organizations contracting with IHS only, and only if the Secretary of Health and Human Services failed to obtain adequate liability insurance for the tribal organization.

As you are aware, the Continuing Resolution (the "CR") making appropriations for fiscal year 1988 included a similar provision, applicable to IHS "638" contractors only. We believe that the provision in the CR should be construed to apply to claims filed after its enactment but based on acts occurring prior to enactment. Otherwise, tribal contractors must still obtain expensive "tail liability" policies to cover such claims. IHS has instructed tribal contractors to continue their existing medical malpractice coverage until the Department of Justice (DOJ), which administers the FTCA, rules on the scope of the CR provision.

There is no doubt that S.1703 would eliminate the need to obtain coverage for tail liability. The Committee report states:

> This provision is intended to cover claims against a tribal contractor for acts or omissions that occurred prior to the bill's enactment but for which the statute of limitations has not yet expired. Under current law, the contractors are required to carry malpractice insurance coverage for such past claims. This so-called "tail liability" coverage is even more expensive than coverage for current claims.

The bill provides that the FTCA applies "to an urban Indian organization, and to employees of an urban Indian organization, only with respect to services provided to Indians." By implication, tribal contractors which are not "urban Indian organizations" and which provide services to non-Indians (such as health organizations which provide health services to non-Indians on a fee basis) would be covered by the FTCA for such services. (Tribal health contractors are probably already covered by the FTCA for services provided to non-Indians under the terms of the CR, although it is unclear. This is another issue to be considered by DOJ in its opinion on the scope of the CR provision.)

As discussed in our General Memorandum No. 87-96, DOJ opposed extending the FTCA to "638" contractors, primarily because it objects to extension of the FTCA to any government contractor. It is uncertain at this time whether DOJ will urge a veto of the bill. If a serious veto threat occurs due to the FTCA provision, that provision will probably be removed from the bill prior to passage.

3. Declination Hearings. The report states that declination hearings are subject to the Administrative Procedures Act (APA). The APA provides for a recommended decision by an Administrative Law Judge, which is not now provided in declination hearings by BIA or IHS. The report further states: "The Secretary may decline to enter into a self-determination contract only if the Secretary utilizes the declination criteria and procedures outlined in Section 201 [of the bill], and provides the tribal organization with a statement of declination in writing within sixty days of the receipt of the application." The report expressly disapproves of the use of so-called "threshold criteria" to refuse to enter into "638" contracts without providing a declination hearing.

4. Indirect Costs. The report makes it clear that the agencies must fully fund indirect costs. It states:

> Section 106(g) is intended to require the Secretary to provide indirect costs for each contract year in addition to the program funding which would have been available to the Secretary to operate a contracted program and to prohibit the practice which requires tribal contractors to absorb all or part of such indirect costs within the program level of funding, thus reducing the amount available to provide services to Indians as a direct consequence of contracting.

5. Attorney's Fees. The Committee added a provision making the extension of the Equal Access to Justice Act (EAJA) applicable to contract disputes which terminated between March 17, 1986 and the date of enactment of the bill. Extending the EAJA to contract disputes will allow tribal contractors to recover attorneys fees when they prevail in such a dispute and the government's position is not substantially justified. In addition, the report states that attorney's fees for "638" administrative proceedings (i.e., contract disputes before a board of

contract appeals and declination appeals) are allowable costs under federal cost principles.

6. Calendar-Year Funding. The Committee added a new provision requiring the Secretaries to use the calendar year as the basis for "638" contracts except where the Secretary and the Tribe agree otherwise. The intent of this provision is to eliminate the cash-flow problems faced by many tribal contractors during the first quarter of the fiscal year due to the delays in the enactment of annual appropriations legislation.

7. Contract Duration. The Committee added a provision that "mature" contracts (i.e., those in effect for more than three years) may be for an indefinite time period.

8. Contract Modifications. The Committee deleted a provision that would have allowed the agencies to modify "638" contracts unilaterally. The bill now provides that all contract amendments proposed by the government must be agreed to in writing by the contractor and the tribal government.

9. Disallowance of Costs. The bill now provides that the agencies must give notice of any disallowance of costs within one year of a final audit report.

10. Carryover Funding. A new section provides that tribal contractors need not provide additional justification to expend carryover funding if the funds are to be expended for the purpose for which they were originally appropriated.

11. Indian Priority System. Another new section would prohibit the Secretary of the Interior from removing any program from the Indian Priority System (IPS) without authorization from Congress. Under IPS, tribes are entitled to determine the levels of funding for certain BIA programs as part of the budget development process.

Sincerely yours,

Hobbs, Straus, Dean & Wilder

HOBBS, STRAUS, DEAN & WILDER

Inquiries concerning this Memorandum may be directed to Michael L. Roy.

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December 16, 1987

Honorable Sidney Yates
Chairman, Subcommittee on Interior
House Appropriations Committee
United States House of Representatives
Washington, D.C. 20515

Attention: Kathleen Johnson

Re: Administration proposal to use 104(a) grant funds for demonstration project (187.21)

Dear Congressman Yates:

On behalf of the Kodiak Area Native Association and the Bristol Bay Native Association, we write to oppose the Administration's proposal to use 104(a) grant funds for a new "funding flexibility demonstration project." Under this project, the Bureau of Indian Affairs would give to ten tribes in block grant form the funds that they otherwise would have received under 638 contracts. As incentive for tribes to enter this project, the BIA proposes to distribute $4 million in 104(a) grant funds to the ten tribes that are selected.

On behalf of their constituent villages, the Kodiak Area Native Association and the Bristol Bay Native Association strongly oppose the BIA's proposal. As you of course know, Alaska Native villages rely on 104(a) grant funds for their most

basic governmental functions. Loss of their 104(a) grants would prevent many of them from functioning as governments at all. Even use of $1 million in 104(a) funds for the demonstration project would have damaging consequences. You have rejected other Administration attempts to destroy the 104(a) program, and we urge you to reject this one as well.

You should also be aware that serious questions have been raised by many tribes about the demonstration project itself. These concerns include potential abrogation of the trust responsibility, the effects on impoverished tribal members if tribes chose to eliminate programs such as general assistance, loss of accountability for use of federal funds, and the impact on tribes within multitribal agencies who do not wish to participate in the project. There is concern that such tribes would either be coerced into participating or transferred to the jurisdiction of agencies far from their reservations.

Several tribes that originally sought to participate in the project have either withdrawn their support altogether or decided not to participate unless the project is substantially modified. This is true of half, if not more, of the ten tribes that the BIA listed in its request to your Committee. I had the opportunity to speak personally with representatives of several of these tribes at a meeting yesterday with staff of the Senate Select Committee on Indian Affairs. Furthermore, when these representatives learned of the plan to earmark 104(a) funds for the demonstration project, they uniformly opposed it and expressed shock and outrage that the Administration would even make such a proposal.

For all of the above reasons, we request that you reject the Administration proposal in its entirety, but most importantly the proposal to use 104(a) funds for the demonstration project.

Thank you for your support on this and so many other issues.

Sincerely,

/s/ Mary V. Barney

Mary V. Barney

mvb:pkm
bcc: Michael Hughes
Lloyd Benton Miller

11/04/1987 15:13 LUMMI TRIBE 206 384 4737 P.01
RECEIVED NOV 9 1987

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Larry Kinley, Chairman
Lummi Business Council
2616 Kwina Road
Bellingham, Washington 99226

Dear Mr. Kinley:

As a follow-up to the hearings held in Washington last week and our subsequent meeting, the Bureau is proposing to implement tribal requests for a demonstration project during fiscal year 1988 based on tribally-designed budgets. As we would hope to begin the project during the current fiscal year, those tribes who expressed an interest during the hearing were considered as the first logical candidates.

There are only a few guidelines:

1. All program activities must be legal under Federal law.

2. An intergovernmental agreement document will be used, but appropriate audit and evaluation requirements will still be required.

3. For planning purposes, the tribal budget should be based on tentative FY 1988 funding levels for all Bureau programs. Once a final appropriations bill is enacted, these tentatives will be provided to the tribes indicating an interest in the demonstration project.

4. The budget should reflect 12-months of operation. For programs not currently included in the BIA justifications, a narrative explanation of the proposed program and its goals should be included.

5. Tribes may request to contract for all agency office operations so long as trust services to individual Indians are maintained, or funds for these activities are retained by the Bureau for these responsibilities.

We want to inform the Committees on Appropriations of the number of tribes wishing to participate in this demonstration project before the completion of conference action on the FY 1988 Appropriations bill. Recognizing that the short time frame (before the end of this month), probably does not permit time for formal tribal council action, we are requesting that you indicate the interest of the tribe through a letter of intent. To be considered for the project during 1988, a letter indicating the tribe's interest should be received no later than November 16, 1987. The letter should be sent to: Acting Chief, Division of Program Development and Implementation, Bureau of Indian Affairs, MS 4616 Main Interior Building, Washington, D.C., 20240.

Sincerely,

Ivan Brecunier

Assistant Secretary - Indian Affairs

DRAFT

Honorable Robert C. Byrd
Chairman
Subcommittee on the Department of
the Interior and Related Agencies
Committee on Appropriations
Washington, D.C. 20510

Dear Senator Byrd:

Following the October 27, 1987 hearing before the House Subcommittee on Interior Appropriations on various Bureau of Indian Affairs' issues, the Assistant Secretary for Indian Affairs decided to pursue some of the tribes' ideas on funding flexibility. In a letter dated November 3, 1987, Assistant Secretary Swimmer invited thirteen tribes who were represented at the hearing to participate in a demonstration funding project. Ten of the tribes responded.

Favorable responses have been received from: Rosebud Sioux Tribal Council, Mescalero Apache Tribal Council, Mille Lacs Reservation Business Committee, Red Lake Tribal Council, Confederated Salish and Kootenai Tribal Council, Quinault Business Committee, Lummi Business Council, Tlingit and Haida Central Council, and the Hoopa Valley Business Council. The Cheyenne River Sioux Tribe declined to participate. While the Jamestown Klallam Tribe did not testify at the hearing, they did have a representative at the follow-up meeting held the day after the hearing and have now been included in the list of those to participate in the demonstration project.

Responses have also been received from tribes which did not receive the letter of invitation. The Bureau has declined to consider these tribes for the demonstration project, since we were unable to issue an open invitation to all tribes.

Unless the Committee objects to the demonstration project, we would propose to meet with the tribal chairmen, area directors, and affected agency superintendents in Washington in January to lay the framework for development of intergovernmental agreements to support budgets based on tribal priorities. It is anticipated that the agreements could be in place by Spring.

Due to the fact that we will be well into the fiscal year at the time the agreements are signed, we request that the $4,000,000 added by both the House and the Senate for self-determination grants be earmarked to support this demonstration project. As the Bureau has indicated previously, although no funds were proposed in the budget for self-determination grants, the tribes which had originally prioritized this program were given the opportunity to move funds into other programs, thus the use of the Congressional add-on for the demonstration project would not be at the expense of other tribes' funding.

DRAFT

In order to fund the additional, unbudgeted travel costs necessary to implement the project, we further request that the amount provided by the Committees for the "equity funding" study be redirected to this purpose. Given the proposed reductions to the budget for this study, it is doubtful that it could be accomplished with the remaining funds.

The Bureau believes that bill language would be required in the Fiscal Year 1988 Appropriations bill to accomplish the demonstration project. Suggested language is enclosed for your consideration.

A similar letter has been sent to the Honorable Sidney R. Yates, Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations, United States House of Representatives.

Sincerely,

SECRETARY

Enclosure

DRAFT

Suggested Bill Language to Implement Demonstration Project

: Provided further, That all funds otherwise available to the Bureau of Indian Affairs to support projects and activities for the benefit of the Rosebud Sioux Tribe, the Mescalero Apache Tribe, the Mille Lacs Reservation, the Red Lake Tribe, the Confederated Salish and Kootenai Tribes, the Quinault Tribe, the Hoopa Valley Tribe, the Lummi Tribe, the Tlingit and Haida Indians, and the Jamestown Klallam Tribe may be used to support intergovernmental agreements with such tribes to carry out programs and activities designed to meet tribally-determined needs so long as such activities represent a legal use of Federal funds: Provided further, That funds available for trust services to individual Indians on these reservations are available to support such intergovernmental agreement only to the extent that the trust services to individual Indians are maintained under the agreement: Provided further, That the United States shall not be responsible or liable for any act or omission by the named tribes or their contractors, subcontractors or others acting on behalf of the named tribes in carrying out these agreements, including but not limited to responsibilities or liabilities for trust functions, contract damages or tort liability: Provided further, That these agreements shall not be subject to any Federal contract or grant laws or regulations except as made applicable by the Secretary in his sole discretion

INTERTRIBAL COUNCIL OF ARIZONA D
124 W THOMAS RD
PHOENIX AZ 85013 06PM

Western Union Mailgram

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6022480071 MGMB TDMT PHEONIX AZ 69 12-06 1028P EST

SENATOR DANIEL INOUYE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SH-838 HART SENATE OFFIC BUILDING
WASHINGTON DC 20510

THE INTERTRIBAL OF ARIZONA REPRESENTING 19 TRIBAL GOVERNMENTS URGE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS TO DELETE SECTION 209(C)S1703 AS AMENDED BY COMMITTEE. THIS SECTION WOULD PERMIT THE SECRETARY OF INTERIOR TO BREAK HIS TRUST RESPONSIBILITY TO THE TRIBES THAT AGREE TO THE SECTION 209 GRANT PROGRAM.
DONALD ANTONE, PRESIDENT ITCA

22:27 EST

MGMCOMP

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

I=00Q005A341 13/07/87 ICS TPMRYNM RNO POMM
05771 RENO NV 12-07
10024 PST RYNG 13:04 EST

western union **Telegram**

SENATOR INOUYE

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PMS SENATOR INOUYE
CAPITOL ONE DC 20510

CORRECTED COPY

THE TOHONO O'ODHAM NATION OPPOSES SECTION 209 (C) OF S.1703 AS
AMENDED BY THE COMMITTEE WHICH WOULD HAVE THE EFFECT OF AUTHORIZING
THE INTERIOR SECRETARY ARROGATE HIS TRUST RESPONSIBILITY TO INDIAN
TRIBES THAT AGREE TO PARTICIPATE IN SECTION 209 DEMONSTRATION
PROJECTS.
THIS PROVIDES INCENTIVE FOR THE BUREAU OF INDIAN AFFAIRS TO ATTEMPT
TO COERCE TRIBES INTO THESE AGREEMENTS AND LEAD THEM DOWN THE ROAD T
O

TERMINATION.
  FNOS J FRANCISCO JUNIOR CHAIRMAN TOHONO O'ODHAM NATION
  PO BOX 837
  SEILS AZ 85634

1258 EST

13:07 EST

TPMPOMX WSH

UNITED SOUTH AND EASTERN TRIBES
1101 KERMIT DR SUITE 800
NASHVILLE TN 37217 15AM

Western Union Mailgram

4-0335428349 12/15/87 ICS IPMBNQZ CSP WHSB 1987 DEC 17 AM 10:58 MH
6153618700 MGMB TDBN NASHVILLE TN 57 12-15 0442P EST

DEC 16 PM 9:21

SENATOR DANIEL K INOUYE
U.S. SENATE
WASHINGTON DC 20510

THE BOARD OF DIRECTORS OF UNITED SOUTH AND EASTERN TRIBES INC HAS PASSED A RESOLUTION 12/15/87 CONCERNING S.1703. USET DESIRES THAT PROPOSED SECTION 209 BE DELETED FROM THE BILL AND THAT THE BILL BE PASSED LEAVING CONSIDERATION OF ANY DEMONSTRATION PROGRAMS TO ANOTHER LEGISLATIVE VEHICLE.
JOEL FRANK PRESIDENT

16:41 EST

MGMCOMP

5281 (R 7/82)

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

Karl A. Funke & Associates, Inc.
729 Second Street, N.E. • Washington, D.C. 20002 • (202) 544-4166

December 8, 1987

Chairman Daniel K. Inouye
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20002

Dear Chairman and Members:

This letter is submitted to you on behalf of the United South and Eastern Tribes (USET). USET is an inter-tribal organization of 17 tribes located in the states of Maine, Connecticut, New York, Rhode Island, Massachusetts, North Carolina, Florida, Alabama, Louisiana and Mississippi.

It is our understanding that the Committee will be considering a substitute to section 209 of S. 1703 at mark-up today. Section 209 currently authorizes a three-year pilot and demonstration project which would authorize up to 10 tribes to receive consolidated contract funding from the Bureau of Indian Affairs. The funding could be used by the participating tribes in any manner they choose. The Department of the Interior would be relieved of any liability for a tribe's failure to provide any services or benefits and for any act or ommission of the Tribe.

The proposed substitute would go even further than the existing provisions of section 209. First, the program would no longer be a pilot and demonstration project of three years duration nor would it be limited to 10 tribes. Rather, all tribes would have three years to request participation in the program but the program could go on indefinitely. There is no provision for a tribe to retrocede from the consolidated contract and resume contracting by program.

Neither the original provisions or the substitute provisions have ever been the subject of hearings nor have tribes had an opportunity to present their views and recommendations. Given the radical departure in policy presented by the original and substitute provisions of section 209, the many unanswered concerns, the potential for abuse and the lack of any remedial remedies, the United South and Eastern Tribes strongly recommend that section 209 be deleted from the bill and be considered at a later time as a seperate legislative proposal with an opportunity for hearings and a more comprehensive and careful consideration of the measure.

With the exception discussed above, USET commends the Committee for its consultation with Indian people on S. 1703 and for developing a bill which is responsive to our concerns and responsive to the problems in the existing law.

Yours cordially,

Karl

Karl A. Funke

KAF/pcw

GERARD, BYLER & ASSOCIATES
1100 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 659-2772

December 8, 1987

Hon. Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
Washington, DC 20510

Attn: Michael Hughes

Dear Mr. Chairman:

Our clients, the Ak-Chin Indian Community, Havasupai Tribe, and Tohono O'Odham Nation, all of which are Arizona tribes; the Leech Lake Band of Chippewas and White Earth Band of Chippewas, which are Minnesota tribes; the Jamestown S'Klallam Tribe of Washington and the Siletz Tribe of Oregon have asked our firm to express their strong opposition to section 209(c) of S.1703, as amended by the Committee. We are informed that the Inter-Tribal Council of Arizona, representing nineteen Arizona tribes, also opposes section 209(c).

Section 209(c) provides that the Secretary of the Interior shall not be liable for a failure to provide services or benefits during any year that a tribe participates in a section 209 Funding Flexibility Demonstration Project and that the Secretary shall not be liable for any act or omission of the tribe in carrying out such demonstration project.

Subsection (c) misconstrues a basic intent of P.L.93-638, which is to permit tribes to deliver Indian services or benefits on behalf of the Federal Government. The Secretary is not relieved of liability to provide services or benefits in the event a BIA agency fails to provide such services or benefits. Neither should the Secretary be relieved of his responsibilities in the event an Indian tribe fails to provide such services or benefits.

Moreover, section 209(c) contradicts the spirit of S.1703's Declaration of Policy: that is, "The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to individual Indian tribes and to the Indian people as a whole..."

Although section 209(c) requires that the Secretary may only enter into demonstration projects at the request of a tribe, long experience has shown that the Bureau may seek to coerce or coax a tribe into a request that is not in the tribe's interest and fail to disclose to the tribe the adverse consequences that may follow from the tribe's request.

In short, subsection (c) would permit the Secretary to terminate the Federal trust responsibility.

We are deeply concerned that a controversy over section 209 could delay action on the entire bill. S.1703 provides major improvements to P.L.93-638 and would halt most, if not all, the arbitrary and capricious practices of the Bureau in administering the Act. It would be tragic, indeed, if our clients and more than two hundred other tribes were to be denied these long-sought reforms by any delays occasioned by the controversy over section 209(c) and efforts to fix it.

So seriously do we view this matter that, in the event section 209(c) or a similar provision is contained in the bill that goes to the Senate floor, we will recommend to our clients that they oppose the passage of S.1703.

By inclusion of section 209(c) or a similar provision, the Committee will send an alarming message to tribes throughout the country.

Your continuing strong commitment to Native American people is greatly appreciated.

Sincerely yours,

William Byler

Forrest Gerard

MISSISSIPPI BAND OF CHOCTAW INDIANS
OFFICE OF THE TRIBAL CHIEF

TRIBAL OFFICE BUILDING
ROUTE 7, BOX 21
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

1987 DEC 15 PM 1:01

December 11, 1987

Honorable Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
United States Senate
Room 838 Senate Hart Office Building
Washington DC 20510

Dear Senator Inouye:

I am writing to oppose the inclusion of proposed section 209 in the Indian Self-Determination Act Amendments bill, S. 1703, especially its subsection (c).

The Mississippi Band of Choctaw Indians, as you know, participated in the long and careful process coordinated by the committee staff in formulating the bill's content, a process which I believe produced some excellent draft legislation. Section 209 was added at the Assistant Secretary's urging after the process was complete -- and after the Bureau had been given an opportunity for input and chose not to submit anything for review.

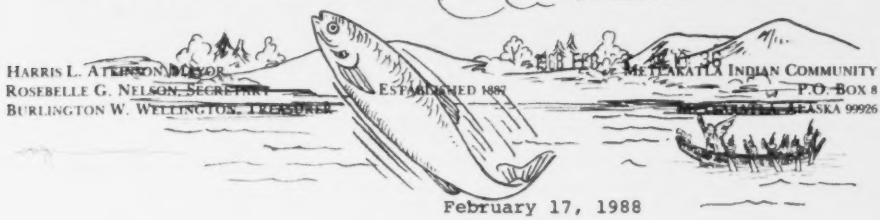
Subsection (c)'s language exempting the Secretary from liability is especially onerous not only because it summarily cuts off the trust responsibility for the proposed demonstration projects, but also because it is so reminiscent of the language of the termination bills enacted by the 83rd Congress. I might add that we have found pilot projects such as those proposed to be generally time-consuming and ineffective.

I would respectfully urge you and the other committee members to consider deleting proposed section 209, and leaving consideration of any demonstration programs to another legislative vehicle. Both tribes and the Congress need sufficient time for careful consideration of this concept, which involves a major alternation in the federal-Indian relationship. Tribes need to been involved in a consultation process with the Assistant Secretary on this, and have available to them written plans to form a basis for evaluation.

Sincerely,

Phillip Martin
Chief

COUNCIL ANNETTE ISLANDS RESERVE



HARRIS L. ATKINSON, MAYOR
ROSEBELLE G. NELSON, SECRETARY
BURLINGTON W. WELLINGTON, TREASURER

ESTABLISHED 1887

METLAKATLA INDIAN COMMUNITY
P.O. BOX 8
METLAKATLA, ALASKA 99926

February 17, 1988

The Honorable Daniel K. Inouye, Chariman
Select Committee on Indian Affairs
U.S. Senate
838 Senate Hart Office Bldg.
Washington, D.C. 20510-6450

Re: S.1703

Dear Senator:

I am writing to express the concern of the Metlakatla Indian Community with the delay in consideration of S.1703, the Indian Self-Determination Act Amendments. The Community strongly supports the bill, which makes much needed changes to P.L. 93-638, expecially in the areas of full-funding (Section 205), contract disputes (Section 206), and regulations applicable to 638 contracts (Section 207).

The Community is concerned with the delay in considering the bill caused by Section 301, the "Tribal Self-grievance Research and Demonstration Project." Controversey over this provision, which is applicable to only ten tribes, has delayed passage of the bill, which will benefit all 638 contractors.

We urge the Select Committee on Indian Affairs to resolve this controversey and to bring the bill to the Senate floor as soon as possible.

Thank you for your continued support of Indian Self-determination.

Sincerely,

METLAKATLA INDIAN COMMUNITY

Rosebelle G. Nelson, Acting Mayor

cc: Senator Murkowski

Oglala Lakota College

COLLEGE PRESIDENT
LOWELL AMIOTTE

P.O. Box 490
KYLE, SOUTH DAKOTA 57752
Telephone (605) 455-2321

BOARD CHAIRMAN
LLOYD EAGLE BULL

February 18, 1988

The Honorable Daniel K. Inouye
Chairman, Senate Select Committee on Indian Affairs
U.S. Senate 838 Senate Hart Office Bldg.
Washington, D.C. 20510-6450

Dear Senator:

We are writing to support S1703, the Indian Self Determination Act Amendments, and to express our concern with the delay in consideration of the bill. Oglala Lakota College receives funding from Tribal priorities through PL 93-638 contracts with the BIA and would benefit greatly from passage of the bill, especially from Section 205 which guarantees full funding of negotiated Indirect Cost rates.

We are concerned that Section 301, the Tribal Self Governance Research and Demonstration Project, which would apply to only ten tribes, has caused a delay in consideration of a bill which contains much needed changes in PL 93-638 of benefit to all 638 contractors. We support the Melcher amendment which would keep Tribal College Act monies out of the block grant since they are education formula funds.

We urge the Select Committee, in the interest of all 638 contractors to reach agreement on Section 301 with all relevant parties as soon as possible and bring S1703 to the SEnate floor for consideration.

Thank you for your attention to these comments.

Sincerely,

Tom Allen
Director of Institutional Development

cc: Senator Tom Daschle
Mike Roy